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# F I R S T R E P O R T

FROM THE

## SELECT COMMITTEE,

APPOINTED TO TAKE INTO CONSIDERATION

THE STATE OF THE ADMINISTRATION OF  
JUSTICE IN THE PROVINCES OF

*BENGAL, BAHAR, and ORISSA.*

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SELEGET COMMITTEE

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THE STATE OF THE ADMINISTRATION OF  
JUSTICE IN THE PROVINCES OF

БЕЛГИИ БАНГАЛАДОРСКА

## F I R S T

# R E P O R T F R O M T H E S E L E C T C O M M I T T E E , &c.

The Select Committee, appointed to take into Consideration the State of the Administration of Justice in the Provinces of Bengal, Bahar, and Orissa, and to report the same, as it shall appear to them, to the House, with their Observations thereupon; and who were instructed to consider how the British Possessions in the East Indies may be held and governed with the greatest Security and Advantage to this Country, and by what Means the Happiness of the native Inhabitants may be best promoted, observe, That the Select Committee, appointed in the last Session of Parliament, did examine into the State of the Judicature in Bengal, and reported to the House such material Facts as then appeared in Evidence before them: Your Committee, in Conformity to the Orders they have received, and the Powers vested in them by the House, have resumed, without Delay, their Inquiries into the present State and Condition of the same Object.

**I**N the earliest Stage of their Researches, Matter has appeared which, they apprehend, may require the immediate Consideration of Parliament; Your Committee have, therefore, deemed it adviseable to make an early Report of that special Matter, without interrupting their Progress in the other Parts of the Inquiry, which they have in Charge from the House.

Five Parties were before the Committee appointed in the last Session; that is to say, the United Company of Merchants of England trading to the East Indies; the Governor General and Council of Bengal; the British Inhabitants resident at Calcutta; sundry Zemindars, and others, Natives of India; and lastly, the Judges of the Supreme Court of Judicature. The Three first appeared by various Petitions and Memorials, which were referred by the House to the Committee; the Fourth Party, the Zemindars, Farmers, and others, who by Petition had applied to the Council General of Bengal for Redress against the Jurisdiction of the Supreme Court, and which Petition was before the Committee; the last Party, namely, the Judges, were before the Committee by Sir Elijah Impey's Letters and other Documents, transmitted to His Majesty's Secretaries of State, and by them laid before the House, and were referred by the House to the said Committee.

In those Letters and Documents, the Judges have given Answers to the several Objections which, as they say, they learn by Report had been made to their Conduct, but which they complain had never been regularly communicated to them; and in these Letters, the Chief Justice, in his Turn, makes various recriminating Charges on the Governor General and Council, the Company's Servants, and others of the British Inhabitants, particularly in regard to the Manner of obtaining and conducting Petitions against them.

Of these Parties, Three only are invested with Parliamentary or other public Powers; the other Two Parties are formed, in general, of Persons more likely to be affected by the Abuses or Neglects of Authority, than to partake in them, or if they should, it is only in a Manner indirect and subordinate, and as they are influenced or supported by those in superior Stations; Your Committee therefore chose to direct their Attention to the Conduct of the principal Parties, as a necessary

cessary Preliminary to their Enquiry into the Means of regulating or relieving them all, according to the Exigence of their several Cases; and, in particular, to find out how far the Directors, the Governor General and Council of Bengal, and the Judges of the Supreme Court of Judicature, have seriously endeavoured the Redress of those Grievances they severally complained of, by the Exercise of the Powers legally vested in them; how far they co-operated in the Relief given, at their Request, by an Act of the Legislature; and what intermediate Arrangements they have made amongst themselves, concerning the Objects which they had submitted to the Determination of Parliament: Your Committee being fully persuaded, that the sole Hope of establishing good Order in India, must entirely depend upon the Conduct of the several executorial Powers acting in prompt Obedience to the Direction of the Legislature, and in a zealous Concurrence with its Intentions.

On these Heads of Enquiry, Your Committee, on the 6th Day of December 1781, ordered the East India Company to lay before them, Extracts of the Letters from the Court of Directors to the Governor General and Council of Bengal, relative to the Release from Imprisonment of the Patna Magistrates, Mir Burcut Ulla and Gullum Mucdum, as also Behader Beg, imprisoned in Calcutta by Judgment of the Supreme Court of Judicature; also a Copy of their Orders, for an Indemnification of those Persons, and the Re-instatement of the Magistrates in their respective Stations at Patna, or other Provision made for them; and Your Committee afterwards examined Mr. Sullivan, Chairman of the Court of Directors of the East India Company, Mr. Wilks, Secretary to the Committee of Secrecy of the said Company, Mr. Francis, late a Member of the Supreme Council, Mr. Shakespeare, late Chief of Dacca, and Major Scott, in the Company's Service, private Secretary to Mr. Hastings, Governor General, and by him appointed an Agent to explain his Conduct in such Parts as should become a Subject of Discussion.

That, in pursuance of the Orders of the 6th of December, Your Committee received the next Day from the India House, a Copy of the Minutes of the Court of Directors, held on Wednesday, the 27th June 1781, as follows:

" The Chairman acquainting the Court, That in the present Stage of the Bill depending in the House of Commons, relative to the Supreme Court of Judicature in Bengal, for indemnifying and relieving certain Persons, and for other Purposes therein mentioned, it is necessary that the Company's Consent should be given, before filling up the Blanks in the said Bill, for the Payment of the Sums proposed to be allowed for indemnifying sundry Persons therein described; and that John Robinson, Edmund Burke, and William Boughton Rouse, Esquires, now desired to know the Court's Sentiments respecting the said Sums; and the Court having considered thereof, it was

" Resolved, That this Court doth consent and agree, if the proposed Bill should pass into a Law, that the Payments therein stipulated to be made, shall respectively be issued, according to their several Specifications in the said Bill, from the Company's Treasury in Bengal; and that Orders be in Consequence given in the next Advices to the Governor General and Council there.

" £ 5000 To Mir Burcut Ulla " 5000 To Gullum Mucdum " 2000 To Behader Beg " 5000 To the Children or Child (if any) of a certain Magistrate called the Cadi or Cauzi Saadi of Patna within Three Months after Arrival of the Act at Calcutta. " A Pension or Annuity to the Widow of the said Cauzi Saadi, equal to the Salary of her late Husband, during the Term of her natural Life; also, " 1000 To the said Widow if the said Cauzi Saadi shall have died without Issue; and, " 1000 To his nearest Male Relation or Relations in the same Degree."	} To each of them severally, or their Order, on Demand, in } Three Months.
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And also, a Copy of the 16th Paragraph of the Company's General Letter to Bengal, dated 29th August 1781, as follows:

" Two Acts of Parliament having been passed during the last Session, whereby the Company's exclusive Charter has been prolonged for Ten Years, and the Supreme Court of Judicature regulated; We transmit you Copies thereof for your Information and Guidance, and enjoin strict Attention and Obedience thereto."

And Your Committee did also, in pursuance of the said Orders on the 10th Day of December, receive from the Directors of the East India Company, a Paper, intituled, " Draught of Paragraphs, to be sent by the Court of Directors of the East India Company, to the Governor General and Council at Fort William in Bengal, by the next Dispatches." Which Paragraphs are as follow:

" When the late Act respecting the Administration of Justice in Bengal was agitated in the House of Commons, it was intended, amongst other Things, not only to release from Prison and indemnify the native Magistrates and others therein named, but also to make Provision for the future Subsistence of Mir Burcut Ulla and Gullum Mucdum, in their former Condition and

" Situation:

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“ Situation ; and to declare them Mahomedan Counsellors to the Court and Council of Patna, with all the Privileges, Profits, and Emoluments thereto belonging ; and also, in Consideration of their Losses and long Imprisonment, to pay to each of them severally, or to their Order, out of the Company's Treasury, the Sum of Five thousand Pounds, Three Months after Demand : And also, to Behader Beg, who had acted under the Authority of the Council of Patna, and been imprisoned, the Sum of Two thousand Pounds, in Three Months after Demand, without Prejudice to any Claim or Remedy which he or his Father, or next Heir at Law, might have, in Law or Equity, to any Lands or Goods whatever. And in case of the Death of any of the before-mentioned Persons, before the Arrival of the Act of Parliament at Calcutta, or before the Money become payable, then the above Sums to be paid to the lawful Representatives of the Deceased : And likewise the Sum of Five thousand Pounds to the Child or Children of the Magistrate of Patna, called the Cadi or Cauzi Saadi, who died as he was under Conveyance to Prison (if any Child or Children he had) and to the Widow of the said Cauzi Saadi, during her natural Life, a Pension or Annuity equal to the Salary of her late Husband ; and if the said Cauzi Saadi should have died without Issue, then a Sum of One thousand Pounds to be also paid to his Widow, and One thousand Pounds also to his nearest Male Relation or Relations of the same Degree.

“ As the Company were equally desirous with the Promoters of the Bill, to contribute to the Relief of the unhappy Sufferers, to make the Compensations above mentioned, and thereby to manifest their Regard for the native Inhabitants of Bengal; it was upon due Consideration judged adviseable, and more honourable for the Company, to omit the compulsory Clauses in the Act ; and agreed, That Orders should be given by the Court of Directors, in their next Advices to the Governor General and Council, for the Money to be issued from their Treasury, and paid accordingly.

“ We therefore direct, that within Three Months, to be computed from the Day of the Receipt of these our Orders at Fort William, you issue from our Treasury, and cause to be paid to Mir Burcut Ulla, or to his Order, the Sum of Five thousand Pounds ; also to Gullum Mucdum, or to his Order, the Sum of Five thousand Pounds ; also to Behader Beg, the Sum of Two thousand Pounds, without Prejudice to any Claim or Remedy which he or his Father, or next Heir at Law, may have, in Law or Equity, to any Lands or Goods whatsoever : And if any of the Parties shall not be living at the Time of the Arrival of this our Order at Calcutta, or shall die before the Money become payable, or is paid, the same shall be paid to his or their lawful Representatives : Also, to the Child or Children (if any there be) of the late Cauzi Saadi of Patna, Five thousand Pounds. Also, that you pay, or cause to be paid, to the Widow of the said Cauzi Saadi, during her natural Life, a Pension or Annuity, equal to the Salary of her late Husband ; also to the said Widow of the said Cauzi, if he shall have died without Issue, the Sum of One thousand Pounds ; also in that case, to the nearest Male Relation or Relations of the said Cauzi Saadi, the Sum of One thousand Pounds. And it is our Pleasure, that the said Monies be issued from our Treasury, and that Payment thereof be made free of all Charge or Expence to the Receivers, and within the Time before limited.

“ We have already noticed, that it was intended by the Act to have reinstated Mir Burcut Ulla and Gullum Mucdum, and to have declared them Mahomedan Counsellors to the Council of Patna, with all the Privileges, Profits, and Emoluments thereto belonging ; it appearing that their Error or Misconduct (if any hath been) did not proceed from corrupt Motives ; and the Act having directed that they should be forthwith discharged from their Imprisonment, on Security being given for the Damages recovered, which Security you are required to cause to be given on their Behalf, and that it shall be competent to appeal to His Majesty in Council against the Judgment : We hereby direct, that you take Care to pay due Obedience to the Directions given in the said Act ; and also, that Mir Burcut Ulla and Gullum Mucdum, be forthwith restored to their respective Offices, as Mahomedan Counsellors to the Council of Patna, with all the Privileges, Profits, and Emoluments thereto belonging.”

And it not appearing to Your Committee, upon what Minutes or Proceedings of the Court of Directors the said Paragraphs were founded, they ordered a Copy of the Minutes of the Court of Directors, of the 7th Day of December 1781, to be laid before them ; and in this Place Your Committee beg Leave to observe, that by the Date thereof, it appears the same was not made until the Day after the Orders made by Your Committee as before set forth ; and which Minutes are as follow :

“ At a Court of Directors, held on Friday the 7th December, 1781,

“ A Resolution having passed this Court, on the 27th June last, for paying certain Sums of Money therein mentioned, in case such Part of a Bill as related to those Sums, and at that Time depending in Parliament, should pass into a Law ; and it being afterwards thought by the Gentlemen who promoted the said Bill, *to be more advisable to omit the same in the Act, that it might be understood in India, that the Payments were made from the mere Bounty of the Company, without any Compulsion* ; and the same being omitted accordingly, in Confidence that the Company would order the said Payments to be made ; and the Chairman having reported to the Court, a Conference

"ence between him and some of the Gentlemen who promoted the said Bill, and assured the Court, that in Consequence of that Conference, the Clauses, compulsory upon the Company for Payment of the Sums therein specified, would be omitted—It is hereby resolved, that the following Sums of Money be paid from the Company's Treasury in Bengal, and that Orders be in Consequence given in the next Advices to the Governor General and Council there; viz.

" £ 5000 To Mir Burcut Ulla " 5000 To Gullum Mucdum " 2000 To Behader Beg " 5000 To the Children or Child (if any) of a certain Magistrate called the Cadi or Cauzi Saadi of Patna, within Three Months after Arrival of the Act at Calcutta. " A Pension or Annuity to the Widow of the said Cauzi Saadi, equal to the Salary of her late Husband, during the Term of her natural Life; also, " 1000 To the said Widow, if the said Cauzi Saadi shall have died without Issue, and " 1000 To his nearest Male Relation or Relations in the same Degree."	}
To each of them severally, or their Order, on Demand, in Three Months.	

" At a Court of Directors, held on Wednesday the 12th December 1781,

" The Chairman acquainted the Court, that in Consequence of some Paragraphs having been prepared for Bengal, containing Orders respecting the Indemnification of several Indian Magistrates, agreeably to a Resolution of Court of the 7th Instant, he had given Directions to stop the Tryal Packet in Ireland, in order to be able to send the said Orders by that Conveyance; and the said Paragraphs being now read, were approved by the Court."

Then Lawrence Sulivan, Esq; Chairman of the East India Company, attending, according to Order, was called in, and asked, Who were the Gentlemen of the Committee, that met the Chairman of the East India House, upon the Subject of Indemnification to the Mahomedan Lawyers, now in Gaol at Calcutta? he said, If he was to trust to his own Memory, he thinks it was Mr. Robinson, Mr. Boughton Rouse, and General Smith; but he does conceive it to be treacherous in that Instance, because the Secretary had taken down the Name of Mr. Burke instead of General Smith. Being asked, From whom the Secretary took his Information? said, From himself, Chairman of the Court. Being asked, If the Minute of the Court of Directors, of the 27th Day of June 1781, does contain his Opinion of the Sense of that Conference? said, It does.—Then, Edmund Burke, Esq; a Member of Your Committee, was asked, Whether he was present at that Conference? to which he said, No, certainly he was not present at that Conference, or any Conference with the Chairman or Deputy Chairman of the Court of Directors.

Mr. Sulijyan being again called in, then, in further Explanation, informed Your Committee as follows:

That he apprehends there must have been Two Conferences; the First, of the 27th of June, where, as well as he recollects, a Desire was expressed on the Part of General Smith, Mr. Robinson, and Mr. Boughton Rouse, that if the several Sums of Money intended by Parliament to be paid to those several Persons, the India Company would give their Consent that the Blanks might be filled up with those Sums—That he did, as Chairman, state the same to the Court, and it had their Assent. He apprehends there was a Second Conference between the same People, when it was suggested, that it would be more to the Honour and Credit of the Company, if instead of Compulsion, they made it an Act of their own Bounty: That he, as Chairman, did promise, that the Court of Directors would give Orders for the Payment of those Sums, and the reinstating the several Persons in their former Honours; and at this Time understood that the Blanks were then filled up, and ready to pass into a Law, but were left out on his pledging himself that those Orders should be carried into Execution by the first Conveyance; and they are now ready to go by the first Conveyance, completely conforming to the Wishes of the Committee—That since the passing of the Act, and his pledging himself those Orders should go, there has not been a single Conveyance to India, except a small Vessel (the Tryal Sloop) intended purposely for Secret Dispatches; but a Letter arriving from Governor Hastings, stating the Probability of the Company having no Investments, it was a Matter of that Moment that the Company thought fit to write a short Letter by that Secret Dispatch, giving their Sentiments upon the Subject; when the Court took the Opportunity of sending in the same Letter, a short Order, with the Act of Parliament, with positive Directions to carry it into Execution: That those Directions went no further than as the Act stated, to deliver those Persons from Prison, (Appendix, No. 1.): That as this was no regular Dispatch, it did not at that Hour occur, to carry into Execution the Remainder of the Orders relative to those People.—But as it has happened the Tryal Sloop is put back to Ireland, an Express has been sent to detain her, that the Court of Directors may carry completely those Orders into Execution; which has accordingly been done, and now only waits the Approbation of the Lords of the Treasury, relative to the Issues of

of the Money for the Indemnification.—And being then asked, Whether he recollects when the Second Conference was held? he said, He should apprehend in July, as the First was in June.—Being further asked, What particular Circumstance leads him to believe it was in the Month of July? he said, To the best of his Memory.—Being asked, Whether he took any private Minute of the First Conference held in June? he said, He does not recollect that he did.—Being asked, Whether he took any Minute of the Second Conference in July? he said, He does not recollect that he did.—Being asked, Does your Memory serve you, not having taken a Minute of either Conference, to fix the First to have been in June, and the Second in July? he said, From the Minute of the Court of Directors, it appears that the First Conference was in June, and the other he cannot recollect.—Being further asked, Whether that Minute which helps to assist his Memory with respect to the First Conference, does assist it only with regard to Date, or to other Circumstances attending that Conference? he said, In no other that he can at present recollect, than that the Blanks had been since filled up, and after that were left out of the Act of Parliament, upon the Company's pledging themselves to make these Payments.—Being asked, What was the Date of the Dispatches sent by the Tryal Sloop, he said, The 29th of August, as appears by a Letter upon the Table.—Being asked, Whether, notwithstanding the Dispatch of the 29th of August was not considered as a regular Dispatch, so material a Direction as that which was proposed to be given in Favour of those unfortunate Persons, might not in point of Propriety, and ought not in point of Justice, to have been then transmitted? he said, He believes he has already answered this Question in his Narrative; that it was an Omission, but attended with no Consequence, because the same Vessel may still carry the compleat Dispatch, and no other has been sent from this Country to India since the Passing of the Act of Parliament.—Being further asked, Whether in the Two Conferences which were held in June and July, the Authority of the Treasury (Mr. Robinson, the Secretary of the Treasury, being personally present) was not considered to have been given for the Payment of those Sums of Money? he said, On the Part of the Company the Court of Directors could answer clearly; on the Part of the Treasury, Mr. Robinson was the Person; but at any Rate, the Forms prescribed by Parliament, direct, that the Court of Directors should lay before the Treasury all Orders that they may send out affecting the Revenues of that Country, and therefore, until they had the full Approbation of the Lords of the Treasury, the Court of Directors would not have felt themselves bound to have issued those Orders.—Being further asked, Whether the previous Signification of the Assent of the Treasury, by the Mouth of Mr. Robinson their Secretary, to the issuing those Orders, is not equivalent in point of Authority to any subsequent Approbation of the Treasury? he said, He does not know that Mr. Robinson came forward in any such Way, and if he had, the Court of Directors certainly should have expected, that he would have been very explicit upon that Subject, before they could have dispensed with the Forms prescribed by Parliament, but he does not recollect that any such Proposition was delivered by Mr. Robinson on the Part of the Treasury.—Being asked, Whether the Act with that Regulation had at that Time passed? he said, He presumes so, because he argues upon that Supposition.—Being asked, Whether at the Time the Second Conference described by him took Place, the Act containing the Regulations for the Administration of Justice in India, had passed the House of Commons? he said, As well as he can recollect, the Act had not passed the House of Commons, the Blanks had been filled up.—Being asked, Whether the Condition of the First Minute made upon the First Conference described by him, bound the Company to pay the Money to the suffering Mahomedan Lawyers, in case the Clauses ordering such Compensation, should not be inserted in the Act? he said, The First Conference was, as well as he can recollect, that the Company should assent to fill up the Blanks with the several Sums stipulated to the unfortunate People, upon Condition the Act passed.—Being asked, Whether the Substance of the Second Conference was not the Reverse, and that the Company was to be bound, in case those obligatory Clauses should be omitted?—He said, Yes.—And being asked, Whether there was a Minute of the Court of Directors made on the First Conference? he said, There was a Minute, and a Copy of it lies upon your Table.—Being asked, Whether there was any Minute of the Court, made in Consequence of the Second Conference? he said, No, there was not.—Being asked, Why there was a Minute made in a Case where the Company was not bound, and no Minute made in a Case where the Company was bound? he said, In the First Conference, he went from the Chair to meet the Gentlemen, as he recollects; from thence, he immediately went to the Court, which was sitting, and delivering the Substance, it became an instant Minute: In the next Conference there was no Court, as he recollects; he attended the Gentlemen, and in a Conversation he pledged himself that the Court of Directors would carry those Orders into Execution; that no regular Minute was made, it being generally understood, Mr. Woodhouse, Sir William James, and other Persons, had been conversed with upon the Subject.—Being asked, Whether, having pledged himself for the Court of Directors, he did propose a Minute for that Purpose the First Board Day? he said, He did not.—And being further asked, How many Board Days passed from the Time of his pledging himself for the Court of Directors, to the Time of his making a Minute upon that Subject? he said, He did not state it to the Board until after he had received the Orders of this Committee, and upon that Representation, it was in the Recollection of Gentlemen, and met with a ready Concurrence.—Being asked, For what Reason he declined to propose a Minute to that Effect to the Court of Directors, for whom he had pledged himself, until an Order came down from this Committee, to enquire what the East India Company had done in that Matter? He said, he has already stated, that an Omission was made, and that the Multiplicity of very important Matters that have occupied

occupied his Time, was the Reason of the Omission, and therefore until the Business came regularly before the Court, it had escaped his Attention to it.—Being further asked, Whether the Omission he has stated, was not the Omission of sending the Orders out by the Tryal Sloop ? he said, It is the same Omission, because, if he had recollect<sup>d</sup> at the Time, the Completion of the Orders, he must in Consequence have brought forward the Representation to the Court of Directors.—Being asked, How the Business could regularly come before the Court of Directors, if he, who pledged himself for them, did not think proper to lay it before the Court ? he said, In the Course of conducting the Company's Business, it is usual to take up every Thing relating to each Settlement, separate, and that is what he calls the regular bringing forward of Business; there had been none in this Season; as soon as there had, this Omission would have been corrected.—And being further asked, Whether he is sure that no Business relating to the Province of Bengal was before the Board during that Period ? he said, He does not recollect any Instances, but very probably, in a Variety of Branches something might be brought forward.—Being asked, Whether he is sure that the Business was more regularly before the Board, upon the Principle of Regularity, which he has just now stated, than on any other Day within the Period of Omission ? he said, He cannot say that it was.—Being asked, Might he not then have brought it to the Board out of Course ? he said, He certainly might, and did bring it on out of Course, because he thought it his Duty not to wait an Hour in bringing forward a Business, where the Committee had made a Requisition.—Being asked, Whether he did not understand that the Committee at the Close of the last Session had made that Requisition ? he said, He had already confessed, that he felt himself pledged for the Court of Directors, to carry it into Execution, which they have accordingly done.—Being asked, Whether a Requisition amounting to a Charge of near £.20,000 upon the Company's Revenue, was a Matter of less Importance than any One of those Things which have occupied the Court of Directors upon any Court Day since the Second Conference stated by him ? he said, The Objects that have occupied his Attention in particular, and which have taken up his whole Time, are Objects of infinitely more Importance than the Sum stated.—Being asked, Whether he can charge his Memory, that no Sum of smaller Importance was ever an Object of the Board's Attention during that Interval ? he said, It is impossible for him to give an Answer to that Question.—The Witness was then asked, Whether during that Period the Directors had in Consideration before them, any Thing relating to the Investments and Revenues of Bengal ? he said, Not regularly, but they had an Attention to the Investments, in consequence of a Letter received from the Governor General, which they answered by the Tryal Sloop.—And being asked, Whether or no the Application and Disposal of £.20,000 ought not necessarily to have come before them in any Directions to the Governor General, relative to the Investments and Management of the Revenues in Bengal ? he said, Undoubtedly it would, if that Circumstance had occurred at the Time.—Being asked, Whether the Abuses alledged to be in the Proceedings of the Supreme Court of Judicature in Bengal, was not an Object of a Petition of the East India Company to the House of Commons ? he answered, Yes.—Being asked, Was not the particular Case of the Patna Magistrates, one of the Objects of Complaint transmitted by the Governor General and Council, upon which that Petition to the House of Commons was founded ? he said, Yes.—Being asked, How he accounted for an Omission of Obedience to what he understood to be the Sense of a Committee of the House of Commons, sitting expressly upon a Complaint made by the Company itself, and its principal Servants ? he said, He has already repeatedly stated, that if that Omission had not been made, he should not have been wanting in carrying into Execution the Orders of the Committee, as is now done.—Being asked, Whether he did not know the Patna Lawyers had suffered a long and grievous Imprisonment, and had been ruined in their Fortunes, by an Execution levied upon their whole Substance ? he said, Yes.—Being asked, Whether he thought that the Sufferings of such Men, being under the Protection of the Company, and acting under their Authority, was not a Matter pressing upon the Court of Directors, both in Policy and Humanity, especially when Parliament had taken up the Company's Sentiments on that Occasion ? he said, The Orders that went out by the Tryal Sloop released them from their Imprisonment, and the rest of their Orders respecting their Restoration and Indemnification are now compleated.—Being further asked, Whether there was any Means to provide for their Subsistence, after being discharged by the Act of Parliament, ordered by the Court of Directors ? he said, If this Omission had not happened, the whole would have been done as it is now ordered.—Being asked, When did the Court of Directors order the Judicature Act to be transmitted to Bengal ? he said, He believes it was the 29th of August last, by the Tryal Sloop.—Being asked, Where is the Tryal Sloop ? he said, In Ireland.—And being asked, When the Tryal Sloop sailed from Great Britain ? he said, He believes that Vessel did not come to England.—Being asked, What Time did the Tryal Sloop sail from Ireland for India with this Act of Parliament ? he said, He does not really recollect, but he believes in all the Month of October.—And being asked, Why, as this was a Business respecting the Lives of Men, and the most pressing Exigencies of Government, in which a Military Force had superseded the Course of Justice, was not a Vessel that might have sailed earlier been dispatched by the Company ? he said, He apprehends that no Vessel could have been brought forward so soon as the Tryal Sloop.—Being further asked, Whether no Vessel could be got sooner, to be dispatched for this Purpose, than one in Ireland, and that could not sail from the Passing of the Act to the End of October ? he said, He apprehends no Vessel could go so soon, for she had been long ready and detained by contrary Winds.—Being asked, Whether the Tryal is now ready to sail with that

Act? he said, The Tryal returned dismasted; she has been refitted, and they expect that she is nearly ready to return again.—And being asked, Whether in the Interval of the Time of the Second Conference stated by him to this Period, he has sent any Advices over Land to any Part of India? he said, He does not recollect that the Court of Directors have sent any.—And being asked, Whether the Secret Committee of the Court of Directors has sent any Advices over Land since the Conference before mentioned to this Period? he said, He cannot give an Answer to that Question.—Upon which the Witness was asked, Why he could not give an Answer? he said, Because in Time of War, the Court of Directors have thought proper to delegate those Powers to the Chairman and Deputy, in order that inviolable Secrecy may be observed, that in no Hour our Enemies may be enabled to intercept our Messengers, and seize our Advices.—Your Committee thought it necessary to read to Mr. Sulivan, the Powers of the Committee; upon which he gave the following Answer, That there has been One Dispatch.—The Witness was then asked, Why was not the Act of Parliament, and the Company's Orders for indemnifying, sent by that Dispatch? he said, The Court of Directors sent no Letter by that Dispatch, and it went without their Knowledge; and he did not think as one, that it was incumbent to send it by any Conveyance but that of Sea.—Being asked, If he is certain that there was a Second Conference with the Persons he has mentioned? he said, He is no otherwise certain that there must have been a Second Conference, than from the Minute of the 27th of June, which stated a conditional Agreement; and his Memory is positive, that he did meet General Smith, Mr. Robinson, and Mr. Boughton Rouse, when assuredly he did pledge himself, that the Court of Directors would carry into Execution the Indemnification without any Condition.—And being asked, Whether there is any Minute on Record at the East India House, of a Paper without a Date, transmitted by the Court of Directors to this Committee, intituled "A Draft of Paragraphs of a Letter to be sent by that Court to India," or how or from what Authority did the Court of Directors frame that Paragraph? he said, There is a Minute on Record dated the 7th Instant, upon which that Paragraph is grounded.

John Robinson, Esquire, a Member of the House, attending at the Request of the Committee, was asked, If he was present at a Conference with Mr. Sulivan, the Chairman of the East India Company, on the Subject of indemnifying the Patna Magistrates? said, He was; that he cannot recollect exactly the Time of the Conference, but it was some Time in June, whilst the Bill was depending in the House of Commons; the Gentlemen present were Mr. Smith, Mr. Boughton Rouse, Mr. Sulivan, and Mr. Purling.—And being asked, What was his Inducement to attend that Conference? he said, It was upon a Conversation and at the Request of several Members of the House of Commons; that Lord North concurred in it.—And being asked to relate the Circumstances of that Conference; he said, It was to represent to the Chairman of the Court of Directors, that it was thought a better and more prudent Way to accommodate the Indemnification, and some Recompence for the Sufferings of the Patna Magistrates, through the Court of Directors, than to have it inserted in the Bill then depending in the House; upon talking with the Chairman he adopted the Idea, he retired from the Conference, went into the Court of Directors then sitting, stated, as he informed them, the Conversation; and returned back again in a short Time, telling them that the Court of Directors had adopted the Measure, would make an Order for the Recompence to be paid, and would send out Orders accordingly.—And being further asked, Whether it did seem to him at that Time to be clearly understood, that the same were to be paid without being specified in the Bill, and that the Clause of Specification was to be expunged? He said, It certainly appeared so to him, and was the very Purpose for which they went to have the Conference.—And being further asked, whether he remembers being present at any other Conference on this Subject with the same Gentlemen? he said, He remembers no other Conference in the Presence of the same Gentlemen, on the Subject of Indemnity and Recompence to the Patna Magistrates; but General Smith and he went to the India House to have another Conference with the Chairs, on the Subject of reinstating the Patna Magistrates, but they were disappointed, for they were come to the West End of the Town.

Then Richard Smith, Esquire, a Member of Your Committee, said, That he concurred with Mr. Robinson in his Account of the Conference at the India House, in every particular.

And Charles William Boughton Rouse, Esquire, another Member of Your Committee, also said, That he concurred with Mr. Robinson in his Account of the Conference at the India House.

Richard Smith, Esquire, a Member of Your Committee, was then asked, Whether he was at a Second Conference at the East India House? to which he answered, No! and said, he did not hear of a Second Conference having been held, 'till mentioned by Mr. Sulivan.

Charles William Boughton Rouse, Esquire, another Member of Your Committee, was then asked, Whether he was at a Second Conference at the East India House? he said, He never remembers to have been present at more than One, in Company with General Smith, Mr. Robinson, and Mr. Purling.

John Purling, Esquire, a Member of the House, being present, was then asked, Whether he was present at a Second Conference at the East India House? he said, He was but at One, in Company with General Smith, Mr. Robinson, and Mr. Boughton Rouse, and that previous to the Passing of the Act; that the Proposal to Mr. Sulivan was, that as there was a Difference of Opinion, with respect to the Indemnification to the Patna Lawyers, about inserting the Sums in the Act of Parliament, it was proposed to Mr. Sulivan, that the Court should take upon themselves to make the Indemnification, without it's being inserted in the Bill then depending; Mr. Sulivan retired to consult the Court of Directors upon it; and upon his Return he informed them, that the Court of Directors had consented to make those Payments, if the Bill passed into a Law without their being inserted in the Act.

Then Mr. Samuel Wilks, from the India House, attending according to Order, was called in; and being examined, he said, That there is a Secret Committee of Directors established at the India House; he does not recollect their Names; they are the Two Chairs, with such other Directors as form the Committee of Treasury; besides that Committee, since the Troubles in Europe, there is a Committee of Secrecy appointed for political Purposes, consisting of the Chairman and Deputy Chairman. The first Appointment of that Nature since he has been in the Service of the East India Company, was when Sir George Wombwell was Chairman; it has been continued from Time to Time to the present Hour; that he knows when this Committee of Secrecy send any Dispatches to India, as he acts as Clerk to that Committee.—And being asked, Whether Dispatches have been sent by Land or Sea, by that Committee to India since the 16th of July last? he said, Dispatches have been sent by Land by that Committee since July the 16th.—And being asked, Whether he knows how many, and at what Periods? he said, Before he answers that Question, he begs Leave to represent to the Committee, that he has taken an Oath of Secrecy, that he will not communicate, discover, or make known to any Person whatsoever, directly or indirectly, any of the Proceedings of that Committee.—And being further asked, Whether he took that Oath on his first Admission as Clerk to that Committee? he said, He took that Oath at the House of Sir George Wombwell, when first admitted as Clerk to that Committee: That he conceives the Periods of Dispatch may in some Instances be of such Importance, as to render it a Breach of his Oath to communicate those Periods. And being asked, Whether he does not consider his Answer to the preceding Question, That Dispatches have been sent since July last, to be a Breach of his Oath? he said, He does not consider that to be a Breach of his Oath, because the Question was general, and does not appear to him to involve in his Answer, a Discovery of the Proceedings of the Secret Committee.—And being asked, Can he, without specifying the Periods of Dispatches, inform the Committee how many Times Dispatches have been sent since the 16th of July? he said, He does not think himself at Liberty to reveal how many Times the Committee of Secrecy have sent Dispatches since the 16th of July, but he has no Objection to mentioning the Date of the First Dispatch since that Period.—And being asked, When that First Dispatch was sent? he said, The Letter was dated the First of August, and finally dispatched the Third of that Month.—And being asked, That as that was the First Dispatch after the Bengal Judicature Act had passed in Parliament, was that Act transmitted by that Dispatch? he said, That Five Copies of the Regulating Act, and Five Copies of the Bengal Judicature Act, were inclosed in that Dispatch; he did not get the Acts from the Printer till the Second; he received Six Copies of each, one he kept for Office Use, and sent the others in that Dispatch; he does not recollect whether the Orders for sending those Acts were given in Committee, or whether from the Chairman alone; if in the Committee, it could not be considered as any Part of their Proceedings, as a Committee of Secrecy; but to the best of his Recollection, it was from the Chairman.—And being asked, Whether the Transmission of the Judicature Act was accompanied with any Orders to the Governor General and Council respecting it? he said, The Committee of Secrecy are not empowered to issue any Orders to the Governor General and Council, except such as respect Political and Military Affairs.—And being further asked, Whether the Subject of the Two Acts described by him, did or did not fall within the Department of the Committee of Secrecy? he said, He humbly conceives it is a Question of Opinion, and if he is permitted to hazard an Opinion, the Committee of Secrecy, as such, had nothing to do with the Two Acts of Parliament; and inclosing them in their Dispatch, proceeded only from a Desire that they should reach India as soon as possible.—And being further asked, Whether any Orders from the Secret Committee or from the Court of Directors did accompany the Transmission of those Acts? the Witness said, That he had before said, that the Secret Committee is not competent to give Orders but upon Political and Military Subjects, and the Court of Directors had no Knowledge of that Dispatch, therefore it was impossible that the Court of Directors could give Orders on the Occasion.—And being further asked, If any Orders whatsoever did attend the Transmission of those Acts, by the Dispatch of the Third of August? he said, The Acts were mentioned in the Advices sent by that Dispatch, but that it is impossible for him to recollect the Terms in which they were mentioned, although the Committee of Secrecy could not consider any Orders on this Subject as falling within their Department; yet, so far as he recollects, the Close of one Paragraph in that Letter, enjoins strict Obedience thereto; he speaks from Memory, and does not pretend to be accurate in the Terms.—And being asked, By what Authority the Oath of Secrecy was administered to him; he said, The Persons who administered the Oath to him were the Chairman and Deputy Chairman of the East India Company.—And being further asked, When new Acts of Parliament relative to the Company's Affairs

fairs are transmitted to India, What is the usual Mode of transmitting or communicating them? he said, The Governor General and Council are advised in the General Letter from the Court of Directors.

Your Committee afterwards further examined Mr. Samuel Wilks; who being asked, Whether he transmitted the Five Copies of the Judicature Act from his own Desire to expedite the Transmission of the Bill to Bengal, or by whose Orders? he said, He does not positively recollect whether Orders were given in a Committee to transmit the Acts of Parliament lately passed; or whether by the Chairman alone; but he would not have transmitted those Acts on his own Authority, much less could he have inserted a Paragraph in a Letter, signed by the Chairman and Deputy Chairman, which mentioned those Acts of Parliament.—Being asked, Who gave the Orders to write the Paragraph in the Letter signed by the Chairman and Deputy Chairman? he said, He wrote that Letter by Order of the Chairman and Deputy Chairman; he does not recollect which of them gave the particular Instructions contained in every Paragraph, but to the best of his Recollection, it was the Chairman that said, "Send the Acts of Parliament;" writing the Paragraph was a Matter of Course after receiving the Instructions.—Being asked, Whether this was the First Copy of the Judicature Bill that was sent to India from the India House? he said, He does not know of any Copy having been sent prior to that Dispatch.—Being asked, Whether he sent the Judicature Act of Parliament to India by a Land or Sea Conveyance? he said, The Dispatch which included the Acts of Parliament, was a Sea Conveyance.—Being asked, What was the Name of the Vessel? he said, He humbly conceives it would be a Breach of his Oath to answer that Question.—Being asked, Whether it was by the Tryal Sloop? he said, It was by a different Conveyance.—Being asked, Whether it was before the Dispatches were sent to go by the Tryal Sloop, or after? he said, Before.—Being asked, At what Time did the Ship sail? he said, He believes he ought not to answer that Question, he humbly conceives it would be a Breach of his Oath to answer that Question.—Being asked, Why he thinks it a Breach of his Oath? he said, Because he cannot reveal the Circumstances of that Dispatch, as he conceives, without breaking his Oath.—Being asked, Whether the Vessel that took that Dispatch proceeded with it to the Tryal, or to India? he said, He has no Knowledge of the Vessel that took that Dispatch having proceeded to the Tryal; he humbly conceives that he cannot give a further Explanation to that Question.—And being asked, Whether he conceives any Detriment can arise to the Company or the State, from informing a Committee of the House of Commons of the Name of a Ship, or the Dispatch of a Vessel, which sailed Six Months since with Dispatches for India? he said, Circumstanced as he is, he does conceive, that without Instructions upon the Point in Question, he is not at Liberty to judge or to give an Opinion, whether Detriment might arise to the Company or to the State by such Disclosure.—And being asked, Whether he has applied for any Instructions on the Subject of Disclosure or Non-disclosure, or has had any Discourse upon the Subject with the Chairman or Deputy of the India Company? he said, Before he attended this Committee the First Time, he asked the Chairman whether he was at Liberty to mention the Dispatch of the Third of August, and he agreed in the Propriety of mentioning that Dispatch to the Committee.—Being asked, Whether he has applied for any Instructions upon this Subject since his First Attendance at this Committee, or has had any Conversation with the Chairman or Deputy on the Disclosure or Non-disclosure to this Committee? he said, He does not recollect that he has made any special Application upon that Subject; but it has been more than once an Object of Conversation between the Chairman and Deputy Chairman in his Hearing; and, from what he understands of the Circumstances of the Dispatch of the Third of August, he is at present restricted from communicating more than he has done respecting that Dispatch.—And being asked, By whom he was restricted? he said, Having received no Authority to communicate more than he has done relative to the Dispatch of the Third of August, he does humbly conceive, he should be guilty of a Breach of his Oath, if he did communicate more than he has done relative to that Dispatch.—It being represented to the Witness, That he had been asked, Whether in any Conversations he has had with the Chairman or Deputy, or in any Conversation at which he has been present, he has been restricted by any thing said in those Conversations, relative to any Evidence to be given to this Committee? the Witness in Explanation said, He understood himself to be restricted by the Authority of the Chairman and Deputy Chairman of the East India Company, from communicating to this Committee the Secrets of that Committee.—And being asked, Whether the Chairman or Deputy distinguished any particular Things as secret, and what? he said, The Circumstances attending the Dispatch of the Third of August was by them considered as secret.—Being asked, Whether there were any other Points in which he is restricted in his Communication to this Committee? he said, He does not recollect that there were.—And being asked, What Time the Dispatch with the Act was sent by the Tryal Sloop? he said, The Secretary of the Company has the Care of those Dispatches; he does not recollect the Day.—Being asked, Whether it is usual in the Committee of Secrecy to send an Authentication of Acts of Parliament to India? he said, He conceives it is not the Province of that Committee, but of the Court of Directors, notwithstanding the Committee sent Copies of the Act in the First Dispatch after the Act passed.—Being asked, Was any and what Conversation held between him and the Chairman, concerning his Examination before this Committee, previous to the Time of that Examination? he said, He waited upon the Chairman to know if he might mention the Dispatch of the 3d of August; he agreed it was proper, but the Circumstances attending that Dispatch could not be disclosed at present.—Being asked, Whether that is the only Conversation he has

has had with the Chairman and Deputy upon this Subject? he said, Certainly not; but in all Conversations upon this Subject, he believes, the Chairman and Deputy Chairman did not consider themselves warranted in authorizing him to disclose the Circumstances attending that Dispatch.—And being asked, If they said any thing to that Effect? he said, He cannot recollect the Terms, but he is positive as to the Restriction.—And it being represented to the Witness, that he had said that they permitted him to mention the Dispatch of the 3d of August, he was asked, Whether they drew any particular Line; how far they permitted him to inform the Committee? he said, He was authorized to inform the Committee of that Part of the Dispatch which mentioned the Acts of Parliament.—Being asked, Whether he conceives that by virtue of his Oath he is warranted to disclose particular Parts, and suppress others? he said, He conceives he is warranted to disclose what he is ordered to disclose by the Committee of Secrecy.—Being asked, If the Chairman and Deputy Chairman, or either of them, assigned any Reasons why they gave him Leave to mention the Date of the Dispatch, and not the Time of the Vessels sailing? he said, The Reasons which rendered it improper to mention the Circumstances attending that Dispatch, were perfectly known to him; he does not recollect the Terms used for restricting him from communicating the Circumstances attending that Dispatch, further than he has already mentioned; that he does not recollect he has been restricted in any other Point.—Being asked, Why he selected this Point in Exclusion of every other, as that upon which he apprehended he would be examined by this Committee? he said, He did not ask it in Exclusion of every other Point, because he also asked whether he was at Liberty to communicate the Circumstance of having sent to the King's Ministers those Papers, which he believes came by Mr. Shakespeare, and related to Sir Elijah Impey's Appointment.—And being asked, Why he made that Application relative to those Papers? he said, Because he was desirous of receiving Instructions on those Points which were peculiarly within his Knowledge, if he should be examined thereon by the Committee.—And being asked, Whether if he had been ordered not to give Information relative to these Papers, he should have thought those Orders were a sufficient Authority for him to withhold his Information from this Committee? he said, He believes he should have felt himself exceedingly embarrassed in communicating any thing that he conceives would infringe his Oath, and should have begged the Indulgence of the Committee; he should certainly have had no Objection to have said he had sent those Papers to the King's Ministers.—And being asked, If the Chairman of the East India Company knew of the Transmission of the Judicature Act, by the Dispatch of the 3d of August? he said, He certainly knew it.

Your Committee then examined Philip Francis, Esquire, late of the Council General of Bengal; who being asked, Whether in his Opinion it would add to the Reverence in the Company's Servants towards Acts of Parliament, if Acts specially made for their Regulation, and for the Adjustment of their Differences, be omitted to be sent out to Bengal for several Months after they had passed, and when Messengers are known to have gone upon other Affairs? he said, So great a Neglect of Duty may produce many bad Effects in Bengal, and can produce no good ones.—And being further asked, What is esteemed in Bengal the authentic Notification of an Act of Parliament, to which they are obliged to conform themselves? he said, The usual and regular Mode of communicating such Acts to the different Presidencies, was by the general Letters of the Court of Directors to the respective Presidents and Councils, and it is so still as he apprehends; but he does not know, that if the King's Judges, having Information of such Acts from Government here, were to give Notice thereof from the Bench, it would not be deemed a sufficient Pronulgation.—That if such Acts were not transmitted, either to the Governor and Council, or to the Judges, he should very much Doubt, whether the Settlement at large would consider them as Laws duly promulgated for their Obedience.—And being asked, Whether a private unauthorized Transmission of Acts of Parliament, (the usual official Channels being neglected) would or would not give Opportunity for those who disliked the Provisions of them, to form Arrangements for defeating or eluding them? he said: Acts of Parliament not regularly transmitted to India, do not go regularly authenticated; they carry no internal Evidence of their being really Acts of the Legislature, and he should apprehend may be eluded and disobeyed without any Risk, at least a Pretence is given for doing both; that the Omission of sending that Act by the first Opportunity of Transmission to India, has evidently a Tendency to create an Opinion in the Settlement, that the Court of Directors are not much in earnest in supporting the Execution of that Act.

Your Committee next proceeded to consider the Appointment of Sir Elijah Impey, who is the Chief Justice of His Majesty's Supreme Court of Judicature in Calcutta, to the Office of Superintendent or Judge of the Court of Sudder Dewanee Adaulut at Calcutta: And this Appointment being made by the Governor General and Council of Bengal (who are the Servants of the East India Company) and revokable at their Pleasure, and His Majesty's Chief Justice having accepted this Appointment upon those Terms, Your Committee thought it their indispensable Duty to examine minutely into the Whole of this Transaction.

And Lawrence Sullivan Esquire, Chairman of the Court of Directors of the East India Company, being examined by Your Committee, said, That there has been Advices come from India, concerning an Agreement between the Governor General and the Chief Justice, by the Appointment of the

the latter to an Office under the Company, since the Time of presenting the Company's Petition to the House of Commons, which Advices he supposes did arrive in October.—And being asked, Whether any Directions were given relative to the Subject Matter of them in the Dispatches which were transmitted by the Tryal Sloop, the 29th of August last? he said, That the Directors thought it a Subject of such Moment, as to require the best Opinions they could obtain with respect to that Appointment; that they referred it to their own Counsel Mr. Dunning, and he believes the Attorney and Solicitor General, in order to enable them to write fully and explicitly upon that important Subject.—And being further examined, he said, He received private Letters of an Intention to place Sir Elijah Impey in that Office, previous to that Time, but no public Advices; That he believes he has heard of the Execution of that Intention; that he cannot recollect that he did see Copies of the Minutes, in the Authenticity of which he might depend of the Consultation itself; that Mr. Shakespeare is a covenanted Servant of the Company; that he arrived in England in May or June last; that he attended the Court of Directors.—And being asked, Whether he did, as Chairman of the Court of Directors, make any Inquiries of him relative to the Situation of the great Contest between the Judicature and the political Government of that Country? he said, The Matter most impressed upon his Mind in Conversation with Mr. Shakespeare, was a Letter which he brought from the Governor General, relative to the expected Failure of the Investments; that it is possible, though not then present to his Recollection, that he might speak of more Subjects, but does not remember it made any Part of his Examination before the Court of Directors.—And being further examined, he said, They did not examine him to that Point, because their Knowledge at that Time was very imperfect of that Matter.—And being asked, Whether an imperfect, or no Knowledge was not a Reason for an Inquiry, if the Matter be of Import? he said, That he does not apprehend the Matter was so far before them, as to press for any Inquiry upon the Subject.

Mr. Sulivan having stated in his Evidence to Your Committee, that the Court of Directors thought the Appointment of Sir Elijah Impey to be Judge of the Sudder Dewanee Adaulut, to be a Subject of such Moment as to require the best Opinions they could obtain with respect to that Appointment, and that they had referred it to their own Counsel, Mr. Dunning, and he believed the Attorney and Solicitor General; and these Opinions having been received by the Company, and laid before Your Committee, the Chairman of Your Committee was directed to confer with the Chairman and Deputy of the East India Company.—The Minutes of which Conference, and the Proceedings of the Court of Directors, of the 15th and 18th January 1782; and also, a Copy of the 84th Paragraph of the Company's General Letter to Bengal, dated the 25th January 1782, on the Subject of the Appointment of Sir Elijah Impey, together with the Case laid before Counsel, and their Opinions thereupon, are inserted in the Appendix, Nos 2 and 3.

Then Mr. Samuel Wilks, from the East India House, was examined by Your Committee, who said, That he is Examiner of India Correspondence, and has served in that Station from the Year 1769—That he saw Papers, purporting to be Minutes of the Governor General and Council relative to the Appointment of Sir Elijah Impey to be Superintendant of the Sudder Dewanee Adaulut before the 10th of July—That the Papers he saw were, to the best of his Memory and Recollection, indorsed as Minutes or Proceedings of the Governor General and Council, in their Revenue Department, of the 29th of September and 24th of October 1780; and were not, to the best of his Recollection, officially authenticated, but that he had no Doubt of their Authenticity when he first saw them—That he has since compared them, and except a few trivial Differences he found them as entered on Consultation—That he received those Minutes from Lawrence Sulivan, Esquire, but did not receive them from him as Chairman of the India Company—That in consequence of the Receipt of those Minutes, he caused Copies to be made, One of which was sent to the Lord Chancellor, One to John Robinson, Esquire, and One to Sir Stanier Porten, for the Information of Lord North and the Earl of Hillsborough—That they were sent by the Instructions of Mr. Sulivan, but not as Chairman of the East India Company, or as official Papers—That he believes the Papers were brought over from India by Mr. Shakespeare—That he does not recollect that at the Time these Dispatches were brought over by Mr. Shakespeare, that there were any authentic Copies or other Advices on that Subject transmitted to the Court of Directors by the Governor General and Council—That he does not know whether the Directors or any of them, or the Chairman, examined Mr. Shakespeare upon the Subject of those Papers.—And being asked, Whether he thought the Chairman did examine Mr. Shakespeare on this Point? he said, He could not tell what to think about it.—And being further asked, Whether, when the Company's Servants bring Dispatches of Importance to the Company, it is not usual to examine them on the Subject Matter of those Dispatches, and particularly concerning the Authenticity of the Papers they bring? he said, The Court of Directors examined Mr. Shakespeare respecting a Paper which he brought over, but with respect to Dispatches in general, Messengers cannot authenticate them, because they receive them sealed, and very often must be totally ignorant of the Contents. With respect to the Papers in Question, the Witness said, That he knew of no Proceedings had thereon by the Court of Directors.—And being further examined, he said, He never heard from whom Mr. Shakespeare received the Dispatch relative to the Sudder Dewanee Adaulut—That the usual Mode of receiving Dispatches from India to the Court of Directors, is this, If it is not a Court Day, the Officer or Messenger is sent

sent to the Chairman or Deputy, but that he never knew the Chairman or Deputy open a Pacquet addressed to the Court of Directors, without calling other Directors to witness the Opening of them—That a Pacquet was received the 16th of December at Night (being Sunday) over Land; that he carried it to the Chairman, who dined out, the Deputy happened to dine at the same Place; that they did not think proper to open the Pacquet, but directed him to carry it back, and ordered the Secretary to summon a Court for the next Day—That it was impossible to observe this Rule with regard to the Pacquet brought by Mr. Shakespeare, unless it had been addressed to the Court of Directors, of which he had no Knowledge—That the Note transmitting these Papers to the King's Ministers, stated them as Copies of Papers which Mr. Sullivan had just received by a private Conveyance—That Mr. Shakespeare brought a Paper to the best of his Recollection, addressed to the Directors from Mr. Hastings, said to have been written by Mr. Shakespeare, at the Request of Mr. Hastings—That Mr. Shakespeare was desired to imprint the Substance of it in his Memory, in order to be able to give some Account of the Matter in case of any Accident to the Ship in the Voyage—That the Paper was not signed, but that a Letter to the same Purport has since been sent by the Governor General, to the Court of Directors—That Mr. Shakespeare was not examined to his Knowledge as to the other Paper—That he does not know why Mr. Shakespeare was not interrogated concerning the Authenticity of the Minutes in Question, and from whom he received them—That Proceedings were had by the Court of Directors upon the Paper brought over by Mr. Shakespeare, respecting the Probability of a Diminution taking place in the Bengal Investment; and that he does not know of any Reasons assigned why no Proceedings were had, or Deliberations held upon the Minutes received by the same Channel.

Your Committee being desirous to ascertain on what Day the Appointment of Sir Elijah Impey was first laid before the Court of Directors, find, from the Secretary of the East India Company, that no Paper relative to the Appointment of Sir Elijah Impey to be Judge of the Sudder Dewanee Adaulut, was laid before the Court of Directors, prior to the 24th of October 1781.

Your Committee then examined Extracts of the Proceedings of the Governor General and Council in their Revenue Department, of the 29th of September and the 24th of October, 1780, which contain the Arguments of the several Members of the Board for and against the Appointment proposed by the Governor General; and also, the Extract of the Revenue Letter from Bengal, of the 25th November 1780, together with the Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 28th of March 1780, which contains the Plan for the Regulation of the Dewanee Adauluts; and also, Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 3d of November 1780, with the Governor General's Regulations for the Sudder Dewanee Adaulut, and Mr. Francis's Minute thereupon; all which are inserted in the Appendix N° 3. Upon this Question of Appointment, Your Committee find, that amongst the Council General, very opposite Opinions were entertained of the Propriety or Impropriety of such an Appointment; their Opinions are recorded at large in the Consultations; and in the Proceedings of the 18th of October 1780, the Council General resolve, by the casting Voice of the Governor General, “ That the Chief Justice be requested to accept of the Charge and Superintendence of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such as the Board shall think proper to add to them, or to substitute in their Stead; and that on his Acceptance of it, he be appointed to it, and styled, “ The Judge of the Sudder Dewanee Adaulut.”

And Your Committee find, that the Secretary having waited on the Chief Justice with the preceding Resolution, laid before the Board a Letter delivered to him by the Chief Justice in answer; which is as follows,

“ To the Honourable the Governor General and Council, &c. &c.

“ Honourable Sir and Sirs,

“ Your Secretary, Mr. Baugh, has this Morning communicated to me your Resolution of the 18th Instant.

“ I am sensible of the Honour conferred on me by the Trust you have reposed in me; accept of the Charge and Superintendence of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such others as the Board shall think proper to add to them, or to substitute in their Stead, and will with great Readiness dedicate my vacant Time to the Service of the Public.

“ I have the Honor to be, &c.

“ (Signed) E. Impey.”

“ Fort William,  
“ 19th October 1780.

In consequence of this Letter, Your Committee observe, that it was agreed, conformably to the Resolution of the Board, “ That the Chief Justice be appointed Judge of the Sudder Dewanee Adaulut.”

And

[ 15 ]

And it was ordered, "That Notice of the Chief Justice's Appointment be sent to the Superintendents of the several Dewanee Adawluts :" And it was agreed, that the Provincial Councils should be advised of this Appointment, by the following circular Letter,

" Gentlemen,

" The Chief Justice having accepted of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, We have appointed him to it, with the Title of Judge of that Court.

" Fort William,  
" the 26th October, 1780.

" We are, &c."

In the Proceedings of the same Day, Your Committee find the following Recommendation,

" The Governor General recommends, that a Salary of 5000 Sicca Rupees, and 600 Sicca Rupees per Month for the Rent of an Office, may be allowed to the Chief Justice for this Appointment ; and that the Motion do lie for the Consideration of the Board, to be decided on at their next Meeting."

And the Council General agreed, that the Motion should lie accordingly.

Philip Francis, Esquire, late of the Council General of Bengal, being returned to England, Your Committee required his Attendance ; and being examined, he said, That he landed at Calcutta the 19th of October 1774, and came from thence the 3d of December 1780—That he was appointed by Parliament a Member of the Council General of Fort William ; that at the Time he left India, he was Second Member of that Government—That he was present in Council when Mr. Hastings made the Motion to request Sir Elijah Impey, the Chief Justice of the Supreme Court, to accept the Office of Superintendent or Judge of the Court of Sudder Dewanee Adaulut—That Sir Eyre Coote, one of the Council General, was not present ; and it was agreed, at Mr. Hastings's Desire, that the Opinions of the several Members should be taken in Circulation, that is, by sending the Question round for the Members to give their Opinion in Writing—That Mr. Hastings, Mr. Francis, Mr. Wheler, and Sir Eyre Coote, were the Members composing the Council General at that Time—That it is not his Opinion, that the Appointment of Sir Elijah Impey to that Office, would be a Means of conciliating the other Judges to the Authority claimed and exercised by the Governor General and Council—That the Governor General and Council, in his Opinion, are themselves the Court of Appeal from the Provincial Adauluts in the last Resort, and could not delegate their Authority to any Persons whatsoever—That the Provincial Courts of Adaulut were established by the preceding Government before the Act of Parliament of the 13th of George the Third took Place ; their Existence was known to Parliament at the Time the Act passed—That the Power of creating such Courts is not disputed or impaired by any Thing said or enacted in that Act—That he considers this as a negative Confirmation at least, of the Court so established—That he is also of Opinion, that when the Act gave the whole Power of ordering, managing, and governing that Country, to the Governor General and Council, they did virtually convey a Power of forming such Institutions as were indispensably necessary for the good Government thereof ; that this is his Opinion, but at the same Time he must declare, that it had been much happier for that Country, if a more clear and decided Power had been given—That the Governor General and Sir Eyre Coote undoubtedly thought themselves possessed by the Act, of a clear unequivocal Power to appoint His Majesty's Chief Justice to superintend Appeals from the Provincial Courts ; their Opinions formed the Resolution of the Board, because, by Law, the Governor General and Council are bound, and concluded by the Opinions of the major Part of the Members present.—And being asked, Whether the Chief Justice acknowledged that Power to be vested in the Council General when he accepted an Office subordinate to their Authority ? he said, He accepted the Office by a formal Letter to the Board ; to which Letter he begged Leave to refer—And the Witness further said, That no Opinion was taken of the Company's Law Officer, of the Legality of the Proceeding, before the Governor General and Council offered this Appointment to the King's Chief Justice ; that it was usual in all important Acts where the Authority of the Supreme Court was affected, to consult the Company's Law Officer, and to take a written Opinion from him—That he does not know why the Governor General did not propose to take the Advocate General's Opinion ; that he did not on his Part propose it, because he had not a Doubt upon his Mind that the Appointment was illegal, and he thought he could prove it—That Sir John Day, the Advocate General, had repeatedly assured him, that the Appointment itself, and more especially the Proposition of annexing a Salary to it, were clearly illegal ; and that if he was called upon officially, he should declare his Opinion to that Effect—That the Puisne Judges made no public Objection to the Appointment of Sir Elijah Impey to the Office of Superintendent of the Sudder Dewanee Adaulut—That the Appointment is expressly said to be personal and exclusive to Sir Elijah Impey alone, that is, to one Man of that Court ; that the Office could not devolve to either of the other Judges by the Terms of the Institution, without a new Appointment—That he thinks the Chief Justice in his Office as Superintendent or Judge of the

the Sudder Dewanee Adaulut, is under the Controul of the Council General, and responsible to them for his Conduct in that Office; and that he allows himself to be so by the Terms of his Acceptance—That if the Board were dissatisfied with his Conduct, they could dismiss him.—And being asked, Whether he believes, that by the Appointment of the Chief Justice to the Superintendency of the Sudder Dewanee Adaulut, it would add to the Authority of the Provincial Dewanee Adauluts? he said, That he could not speak positively to the future Effects which this Office might produce; but he is inclined to think, that it would rather weaken than strengthen the Authority of the Dewanee Adauluts; because it subjects not only all their Judgments to an Appeal, but all their Proceedings whatsoever to the Inspection and Revision of the Judge of the Sudder Dewanee Adaulut.—And being further asked, Whether he thought that the Appointment of the Chief Justice to this Office, would in any Measure interfere with his Duty as Chief Justice? he said, He had stated at large his Reasons for thinking it would, in the Minute which he drew up and recorded, when the Matter was under Consideration; and he begged Leave to refer the Committee to that Minute (See Appendix N° 4.) And the Witness further said, That on the Principles constantly maintained by the Judges of the Supreme Court, any Person thinking himself injured, either by the inferior Adauluts or Sudder Adaulut, might have his Remedy in that Court—That it would be in Effect an Appeal from Sir Elijah Impey, Superintendent of the Sudder Dewanee Adaulut, to Sir Elijah Impey, Chief Justice, and the Two Puise Judges of the Supreme Court; that he has stated a similar Case in the Minute before mentioned, with his Opinion upon it.—And being asked, If the Court of Sudder Dewanee Adaulut did regularly continue its Sittings and Proceedings after the Establishment of the Supreme Court of Judicature in Bengal? he said, That as well as he recollects, the Governor General and Council sat but Two or Three Times as a Court of Sudder Dewanee Adaulut; that some Doubts arose concerning their Right and Authority to sit as such; but that the Governor General and Council did from that Time continue to receive at the Revenue Board, Appeals from the Decrees of the Provincial Adauluts, and to reverse or confirm the same—That Appeals from the Provincial Courts of Adaulut have not been so numerous, but that the Governor and Council could have attended to the Decision of them in the Court of Sudder Dewanee Adaulut; and that he has already stated in his Minute, That the Administration in Bengal wanted Vigour, not Time, to execute all its Duties—That he thinks, that after the Measure pursued by the Governor General and Council, to restrain the Jurisdiction of the Supreme Court over the Zemindars, Collectors, Farmers, Ryotts, &c. he thinks the Native Inhabitants would necessarily conclude, that all the Points hitherto in Dispute between the Council General and the Supreme Court were given up to the Court; and that it was meant to throw the whole Power of the Government, in that Department, into the Hands of the Court—That the Natives at large could not distinguish between the Chief Justice and the Court; and that he conceives this would be the Impression of the Measure upon their Minds—That as far as his Conversation extended, he never knew an Act of Government give such general Dissatisfaction to the European Inhabitants, as this Appointment—That there had been some Disputes between the Provincial Adauluts and the Provincial Councils; but he did not recollect that they engaged much of the Council General's Time and Attention; and that he is of Opinion, that any Questions of that Kind might have been easily settled by their Authority—That those Courts were established by Authority of the President and Council, whose Powers had been conveyed to the Governor General and Council by Act of Parliament, as he had described it in his former Answer—That Mr. Hastings was President of that Council at the Time of the Institution of those Courts—That the Provincial Courts were appointed by the President and Council—That the Officers in those Provincial Councils, are nominated at present by the Governor General and Council—That the Power that appoints the Provincial Councils, and the Power that appoints also the Provincial Adauluts, and originally established both, is the best adapted, and the only Power that can settle Disputes between them—That the Chief Justice has not, to his Knowledge, in the late Controversies, complained, that he had so little Business in his Court, as left him full Time to attend to a Business which would require a laborious and almost unremitting Application; but, on the contrary, he always understood that he was overloaded with Business, and that he has stated it so in his Minute—That he never heard Mr. Hastings, during those unhappy Controversies, express an Opinion that the Conduct of the Chief Justice towards those Courts in particular, and the Members of them, was prudent, just, and moderate—That he has frequently expressed the highest Disgust and Satisfaction of the various Proceedings of the Supreme Court, where Actions have been brought in Consequence of Proceedings or Judgments in the Provincial Councils or Adauluts—That it appears farther, by the Letters from the Governor General and Council to the Court of Directors, written in February and March 1780, that they unanimously deemed it to be the constant Effort and Intention of the Judges of the Supreme Court, to lower and degrade the Government of the Country in the Eyes of the People, by every Means in their Power—That he believes the Committee will find this Opinion expressed in their Letter in Terms not less strong than those he then made Use of from Memory.—And the Witness being asked, What Reasons Mr. Hastings assigned for his Change of Opinion, in appointing a Person whose Conduct he had represented in that Light, in Regard to those Provincial Courts, and that Government to be the Controul of the Courts, and an acting Member under the Authority which he represented to be the Chief Justice's Intention to undermine? he said, That he assigned no Reasons to him, but those which appear on the Face of his Minute; and he further added, that he did not hear that Mr. Hastings assigned to any other Person,

Person, any Reasons for his Change of Opinion concerning the Conduct and Views of the Chief Justice—That he has heard the Chief Justice did represent the Proceedings of Mr. Hastings and the Council General, as being unjust and mischievous to the Interest of the Company, and prejudicial to the Ease and Welfare of the Natives; and he knows that he was not reserved in making Declarations to the same Effect from the Bench. And being asked, What Reasons the Chief Justice assigned for his Change of Opinion of the Governor General and Council, so as to induce him to accept of an Employment under them, and to be held during their Pleasure? he said, He had no Reason to think he had changed his Opinion of them, or of their Proceedings—That Mr. Hastings did not assign any Reasons, that he knew of, for not waiting the Determination of the Court of Directors, and of Parliament, upon the Points submitted to them upon their Representations and Petitions.—And being asked, What was the Cause of the Hazards that the Superiors of the Provincial Dewanee Courts were exposed to, in the Exercise of their Functions, and which caused their Remissness in those Functions? the Witness said, That he does not know that they were remiss; that the Hazards alluded to could only be apprehended from Actions that might be brought against them in the Supreme Court, and which it was said the Court rather inclined to encourage than not—That the Council General never did, to his Knowledge, give an Opinion, that the Power of bringing those Actions was a Thing mischievous to the Public; that he cannot speak positively who Mr. Hastings thought was the Cause of the Disregard that had been shewn to the Authority of the Provincial Courts.—And the Witness being asked, What Reasons Mr. Hastings assigned, why no Man would dare to contest their Right of acting, when their Proceedings were held under the Sanction and immediate Patronage of the First Member of the Supreme Court? he said, The Question was never debated at the Board; and no Reasons therefore were assigned on either Side, but those which appeared in the Minutes. And being further asked, Whether any Man might not dare to question the Authority of those Courts in the Supreme Court, although the Chief Justice presided in the Sudder Dewanee Adaulut Court, or whether the Supreme Court has formally abdicated that Power, since the Chief Justice has accepted his new Office? he said, The Supreme Court have not relinquished any Part of the Power they ever pretended to, and he supposes that they would be as ready as ever to receive Complaints against the Members of the Provincial Adauluts—That he speaks of the Court as such; but how far the Natives might be deterred from having Resource to that Sort of Remedy, when they saw the Chief Justice at the Head of the Provincial Administration of Justice, can be only Matter of Conjecture—That from what he knows in general of those People, he thinks they would be deterred by this Appointment from seeking Justice in the Supreme Court; and for this plain Reason, they know that by the Appointment of the Chief Justice, he is to revise and correct the Judgments of the inferior Adauluts, and naturally will not go into another Court, where the same Judge presides, to look for Redress.—And the Witness further said, That he believes the Judges of the Supreme Court, or some of them, have often declared an Opinion, That if Men were deterred, by any Authority derived from the Company, from complaining of the Mal-administration of the Provincial Courts and Councils, the End of their Appointment would be defeated, and their Court be of little or no Use—That Mr. Hastings did not assign any Reason, nor is he able to assign any, why the giving a Place, to be held during Pleasure under the Governor General and Council, should be a Means of lessening the Distance between the Board and the Supreme Court, which is asserted in his Minute to have been more than the undefined Powers assumed to each, the Cause of the Want of that accommodating Temper which ought to influence their Intercourse with each other—That Mr. Hastings proposed to the Board the Appointment of a Salary of 5000 Sicca Rupees a Month, and 600 Sicca Rupees a Month for an House, amounting together to near £. 8000 a Year—That the Judges have frequently declared, That the Purpose of their Appointment was to be a Controul to Europeans acting under the Company's Appointment, and to prevent their Extortions and Oppressions—That he should not think that the lessening of the Distance between the Council Board and the Supreme Court, by giving to the chief Member of the latter a lucrative Employment, to be held during the Pleasure of the former, had a Tendency to answer the Purposes of the Institution of the Supreme Court—That it has evidently a Tendency totally to defeat those Purposes; for if you suppose all, or a Majority, of the Judges of the Supreme Court to hold lucrative Offices revocable at the Pleasure of the Governor General and Council, you cannot avoid concluding, that their general Conduct will be guided by the Inclinations of the Governor General and Council; that this in general might be true; but he does not mean to say, that it would be true in the specific Instance of the present Chief Justice and Judges—That a lucrative Office, revocable at Pleasure creates Dependence, and can create nothing else; he does not know by what Means it could increase the Authority of the Court; as far as such Authority may be affected by the Respect and Opinion of the People, it must necessarily be diminished, by the Idea of the Judges being dependent in any Shape on the Governor General and Council—That if the Natives understand the Object and Intention of the Institution of the Supreme Court, he thinks it must lessen their Confidence in that Court, to see One of the Judges of it employed in, and presiding over, those very Courts over which the Supreme Court assumed and exercised a Controul—That the Appointment of a Salary to the Office, had not taken place when he left Bengal, but does not believe it to be owing to the Chief Justice's Rejection of the Proposition—That he never heard that the Chief Justice had expressed his Disapprobation of that Proposition—He is convinced Mr. Hastings would not have moved it in Council without the previous Consent and Approbation of the Chief Justice—That he saw

the Chief Justice after that Proposition had been made in Council, and that he did not express to him any Disapprobation of the Appointment or Salary. And the Witness being asked, What prevented that Salary from being annexed to the Appointment? he said, That Sir Eyre Coote was gone to the Coast, Mr. Wheler and himself were avowedly against the Proposition; and of course, if the Question had been put, it would have been lost—That the Judges of the Supreme Court did not communicate to the Council General any Letters or Representations that they sent to His Majesty's Ministers. And being asked, What was the State of the Company's Treasury when this Appointment was made? he said, That he thinks it was the Beginning of September that Mr. Hastings opened the Treasury for a Loan at Interest, without Limitation; at that Time every Branch of Public Service was greatly in Arrear, particularly the Army—That at the End of November, if he recollects with Exactness, the Debt or Demand against the Treasury amounted to Ninety-one Lacks Ninety thousand One hundred and Eighty-three Current Rupees (Vide Appendix, N° 5.) and their Distress for Money at that Period was very great—That they had taken the Deposit of Thirty Lacks out of the new Fort, which, at a former Period, they had agreed to reserve against any great or unforeseen Emergency or Distress—That the different Schemes adopted for raising Money, had not succeeded in the Degree they expected—That he does not recollect to have heard of Sir Elijah Impey having offered his Services to attend the Dewanee Court in Quality of an Assessor, not claiming a Voice, but simply to give his Advice (Vide former Report, General Appendix, N° 32.)—That the Opinion of the Judges, including the Chief Justice, was not officially taken—That the Opinion of the Advocate General was not taken; that it was never proposed to take the Judges Opinion—That the Advocate General's Opinion was asked, and much relied upon, in the former Disputes between the Supreme Court and the Council—He does not know that the Provincial Courts of Adaulut have been so perverted in the Execution, as to be the great Engines of Oppression over the miserable Inhabitants of the Provinces of Bengal, Bahar, and Orissa—That he does not know that the Administration of Justice has ever been let to hire to Dewans or Banyans of those Gentlemen whose Duty it was to preside in that Court, or to any other Persons whatsoever—That he never heard it said but of One of the Provincial Adauluts, and of that he never saw Proof; that it never came officially before him—if a Complaint of such an Abuse, accompanied with proper Evidence, had ever been brought before the Governor General and Council, he is certain it would have been followed with the Ruin of the Parties in every Sense—That he does not know if there were any regular Profits annexed to the Administration of Justice, which was in the Power of the Members of the Provincial Councils, or others, to let out to Banyans or Dewans; nor has he ever heard, that the Forms and Terror of Justice have been held forth merely to give Colour and Force to Rapine and Extortion; it is possible wrong Things may have been done, but he never heard of any Proceedings of the Adaulut, which approach to that Sense and Extent—That during the Time that he was in Bengal, he does not know or believe that Oppressions by the Company's Servants have operated in so enormous a Degree, as very seldom to have left the Oppressed the Means to obtain Justice by civil Suits; the poorest Man in that Country, if he could reach Calcutta, or any Agent for him, might present his Petition to any Member of the Council, by whom he believes it would have been examined—That some of the lower Classes of People are oppressed, he does believe to be true, but he also believes it is not by Europeans. The Witness says, He speaks generally, for there may be Instances to the contrary, and some he has heard of; some appear upon the Records: The Case which was said to be of the grossest Nature, which made the greatest Noise, and which was most insisted on by the Judges, was that of Nadara Begum; she was said to have been divested of every Thing; she nevertheless found Means to apply to the Supreme Court, and found Redress there.—And the Witness being asked, By whom then he conceived those Oppressions are committed? said, That he begged Leave to observe, that his Residence was confined to Calcutta, he cannot therefore speak of Transactions in the Districts from his own direct Knowledge; the Information he has had inclines him to believe, that those low Classes of People of whom he spoke, are oppressed by other Natives, immediately in Authority over them—The Salt Contractors in particular did oppress the Molungues in a very barbarous Manner—He has heard too, that the lower Classes of the Weavers are oppressed in many Ways, by the Black People in the Provision of the Company's Investment: Complaints in both Instances were brought before our Government—That he knows the First to be true, and gives Credit to the Second—That he cannot give any positive Information, whether any Reform has been made in those Respects, because it is very difficult to know at Calcutta what the real State of Facts is, at any great Distance—The Molungues are no longer subject to Contractors, and therefore probably are better treated than they used to be; with respect to the Weavers, he can say nothing.—And being asked, Whether the Proceedings of the Supreme Court of Judicature, upon the Matters in Dispute, had not been represented by the Governor General and Council to the Natives and to the Court of Directors, as oppressive and injurious to the Natives of India? he said, That the Governor General and Council made various Representations to the Court of Directors to that Effect, but not to the Natives; the Provincial Councils were directed to inform the Zemindars and other Landholders, that as such they were not subject to the Jurisdiction of the Court, nor bound to submit to their Process—That many Individuals have presented Petitions and other Complaints, either directly or through the Medium of the Provincial Councils, stating their Proceedings as grievous to them, and there was also a Petition from the Zemindars of the Province of Bahar to the same Purpose.—And being asked, Whether the Measure of advising a Disobedience to the Process of a Court of Justice, was

not a strong Measure, and which could not be justified, but upon the Opinion of the Board that a strong Necessity required it? he said, That Necessity undoubtedly did require the Measure; at the same Time, as he acted constantly upon a Conviction, that the Proceedings of the Supreme Court were illegal, he did deem it legal to resist them; this he did at his Peril, in the Terms of the King's Charter—That Mr. Hastings did entirely concur in the Necessity of the Board's Proceedings, and in the Illegality of the Court's Proceedings in the Cossijurah Cause, and there never was a Difference of Opinion between Mr. Hastings and him in that Business—That Mr. Barwell never dissented or disagreed with them in that Business—That the Board certainly considered the Proceedings of the Supreme Court, in the Patna Cause, as oppressive to the Natives, because the Majority of the Board, consisting of Mr. Hastings and Mr. Barwell, were from the First avowedly of Opinion, that the Will in favour of Nadara Begum was a Forgery. As to himself, it is proper he should say, that the first Impression he received of that Cause, was against the Cauzi and Muftees, and even against the Proceedings of the Provincial Council of Patna, because he knew a Fact, which he deemed irregular in the Proceedings, and which they did not thoroughly account for to his Satisfaction. By the Principles of their Institution, the Provincial Council, or the Member that sits at the Head of the Adaulut, should have tried the Facts themselves, and only refer to the Learned in the Mahomedan Law, if a Question of Law arose upon the Facts. Further Inquiry and more exact Information induced him to alter his first Opinion, and in the End, he was satisfied that the Will was a Forgery; but the Question never came, nor could come judicially before him, of course he never acted upon the First Opinion or upon the Secnd, except that he opposed the bailing of the Parties, at so great a Risque to the Company as £. 40,000; for he understood, that if any one of these Persons had escaped, the Company must have paid the Whole; as Trustee for the Company, he could not undertake that Risque in their Behalf; the Bail was nevertheless granted by the Majority of the Board—That the Cause was defended by the Company's Attorney, and at their Expence—That the Bailing and Defence, and the subsequent Conduct of the Board, must have the Effect to indicate to the Natives, that it was the Opinion of that Board, that the Conduct of the Supreme Court was in that Instance oppressive—That he believes the Imprisonment of the Cauzi and Muftees was a very unpopular Act.—And being asked, Whether if the Proceedings of the Provincial Council at Patna had been irregular, the Provincial Council or the Mahomedan Lawyers, were in the Opinion of the Board most to blame? he said, None of them thought that the Mahomedan Lawyers had been to blame in any Degree; with respect to the Provincial Council, he thinks it was not disputed that they were irregular.—And being further asked, Whether assessing small Damages upon the Members of the Provincial Council, and very large ones upon the Mahomedan Lawyers, was thought by the Natives a proper Proceeding of a Court, instituted for their Protection against British Subjects in Authority? he said, Not possessing the Language, he had but little direct Intercourse with the Natives; but from what he has heard, he believes it to be true, that the Mahomedans in general were highly dissatisfied with the Judgment of the Supreme Court against the Law Officers.—And being further asked, Whether the European Members of the Provincial Council of Patna were not indemnified, and the Mahomedan Law Officers suffered to lie in Prison? he said, There was no Way of releasing the Mahomedans, but by satisfying the Judgment, which none of them thought that the Board was authorized to do, considering the Greatness of the Sum—The Damages awarded against the Members of the Patna Council, he thinks, were paid down by the Company's Attorney on Account of the Parties, who were called upon to repay that Money, and he believes did so—That the Mahomedan Lawyers continued in Prison unquestionably for want of Ability to satisfy the Judgment—That they continued in Gaol when he left Calcutta.—And being asked, What is the Situation of Persons confined in Gaol at Calcutta for a considerable Length of Time, and the probable Effects of such Confinement upon their Health and Lives? he said, It is hardly possible for any human Creature to be placed in a more miserable or dangerous Situation; in the rainy Season it must be particular unhealthy; and he thinks, that for an European to be confined there a Month in that Season, would probably occasion his Death—That he knows of no Europeans confined there lately, except Mr. Naylor and Mr. Swainston—Mr. Naylor, the Company's Attorney, was committed for a Contempt, and to answer Interrogatories; he was at that Time in an indifferent State of Health; his Confinement he believes must have hastened if not occasioned his Death, which happened soon after his Enlargement—Mr. Swainston, a Company's Servant, was committed for a Contempt, and he thinks remained in Gaol about Three Weeks; he was as strong and healthy a young Man as any in the Company's Service; he paid the Witness a Visit the Day he came out of Prison, but he was so much altered and reduced by his Confinement, that he did not at first recollect who he was.—And being asked, What is the probable Effect in the Minds of the Natives, when they see a Court, instituted for their Protection, considered by the Government of the Country as an Instrument of their Oppression, will it give them a Reverence for that Court, and for the Authority by which it was instituted? he said, Certainly not; as far as he knows or can judge, the Natives in general did not think the Court a Protection for them.—And being further asked, When the Government of the Country undertakes the Protection of the Natives against that Court, as acting in their Opinion oppressively, and rewards the Person charged with the Oppression, with Offices of further Trust and Power over their Persons and Fortunes, and offers large pecuniary Emoluments which arise from their Labour and Industry, whilst the Persons

Persons who are stated to have endured the Wrong remain in the Prison described by the Witness, unredressed for Years, what Impression will this have upon the Minds of the Natives in favour of English Government in that Country? he said, It cannot but make the deepest Impression in their Minds, to the Disadvantage of the English Government, and of the Character of the Nation.—And being further asked, Whether in any Event the Natives of India suffering oppressive Imprisonment by unjust or erroneous Law Proceedings, can have a speedy Redress in a Court of Appeals, and by the ordinary Forms of Justice in India? he said, An Appeal to England at the best, offers but a distant Remedy, and that attended with great Vexation and Expence; in the Case of Imprisonment until the Event of an Appeal to England shall be known in India, it can produce no Relief or adequate Redress, because the Party imprisoned will in all Probability die in the Interval, or at least lose his Health and Constitution.—And being further asked, Which will tend most to the strengthening of English Government, and the Ease of the Natives, a vigorous Execution of the Laws which exist, and an Enquiry into Corruptions and Peculations, or making new Laws without an effectual Execution of the old ones? he said, Making new Laws avails nothing, as long as you suffer those which actually exist to be violated or evaded—That he thinks the Non-execution of the old Laws in India will be an Encouragement to despise the new.—And being asked, Whether the Judges had sufficient Notice between the Time of the Governor General and Council's transmitting their Complaints to Europe, and his Departure from Bengal, to transmit a full Answer and Justification of their Proceedings, to Government in England? he said, They did not communicate to the Judges their Letters to the Court of Directors, nor did the Judges communicate whatever Letters they might have written to the King's Ministers, but the Grounds of the Differences between them were thoroughly understood on both Sides; the Interval between the Time of the Complaint and his Departure was about Nine or Ten Months—That the Judges never demanded from the Board, Copies of the specific Complaints transmitted against them.—And being asked, Whether the Judges or the Governor General and Council did transmit immediately to the Court of Directors, or the Secretary of State, an Account of the Arrangement they had made with regard to the Sudder Dewanee Adaulut? he said, He knew nothing of what might have been done by the Judges; their first Letter to the Company after the Appointment of Sir Elijah Impey took place, ought to have contained an Account of it, and he took it for granted it did so—That in his Opinion no Inconvenience could have arisen from suspending the Execution of that Arrangement until the Sense of the Company and of Parliament, to whom the State of the Jurisdiction had been submitted, should be known.—Then being asked, What Consequence he thought it would have on British Authority in that Country, if, pending Applications to Parliament for Direction and Indemnity, the Parties undertake the Arrangement on which they petition Parliament, by Compromises amongst themselves? he said, He thinks it must have some bad Effects, and can have no good ones; the People at large, as far as they can be supposed to enter into the Matter, must consider the Event, as alluded to in the Question, as a Compromise, not as the regular Settlement and Decision of a public Question—That from the Period of the Governor General and Council's Petition to Parliament to the Time of the Chief Justice's Appointment to the Sudder Dewanee Adaulut, there was no Concession on either Side, the Court continued to exert their Claims to Jurisdiction, and the Board to deny and resist those Claims—That he never heard of the Proposition for the Appointment of Sir Elijah Impey to that Office, till it was proposed in Council the 29th of September—That he does not recollect, that after the Appointment of the Chief Justice, there was any Act done by the Court involving the Question formerly in Dispute between the Board and the Supreme Court.—And being asked, Whether, supposing the Appointment of Sir Elijah Impey to have been in his Opinion legal, and tending to allay the Differences between the Council General and the Supreme Court, he would have thought himself obliged to reject or defer that Measure, on Account of the Application made by the Board on those Subjects to the Company and to Parliament? he said, He should have thought himself bound to wait the Decision of those Tribunals, to which he had appealed; that he should imagine if Attention had been given to the Subject in England, and no Time unnecessarily wasted, an Answer might have arrived in 12 or 14 Months.—And being further asked, Whether this Measure was considered at the Time as temporary, and to continue only until the Sense of Parliament was known? he said, He received it from the Governor General, as meant by him to be a permanent Establishment; and if he is not mistaken, it is so described in the Governor's Minute.—And being further asked, Whether it was a general Rule of the Board, when a Reference was made on any Subject to Europe, to wait for an Answer without taking any intermediate Step? he said, There could be no such general Rule to bind the Discretion of the Government at all Events; Circumstances might intervene which might make it indispensably necessary for the Government to act, notwithstanding any preceding Reference to the Court of Directors; but in general it was thought right to wait for Orders when a Reference was made.—And being asked, Whether the Consequences of the Dissentions between the Board and the Court were not of a Nature so pressing as to render an immediate Reconciliation highly expedient and very desirable? he said, By no Means at that Point of Time; the great Dispute which had produced overt Acts of Hostility between the Two Bodies, was in fact determined by the superior Force of the Government against the Court, and the Country in general was quiet; it was the Complaint of the Court and the Officers belonging to it, that they ceased to have any Business; and this was said to be a Grievance to those Gentlemen; a more direct, and perhaps a more satisfactory

factory Answer to this Question may be taken from Mr. Hastings's Minute; he himself expressly says, " That the Contests with the Court are at present composed, but we cannot be certain that the Calm will last beyond the actual Vacation."—And being further asked, Whether he understood that it was the Opinion of Sir John Day, the Advocate General, that the Appointment of a Superintendant of the Sudder Dewanee Adaulut was illegal in general, or whether that Opinion was confined to the Appointment of the Chief Justice? he said, The Advocate General's Opinion was stated to him only in Conversation; it arose immediately from the Fact, and was confined to it: But he concludes, that the Advocate General would have thought it equally illegal, if the Appointment had been given to any other of the Judges; he does not recollect that he said any thing with respect to the Legality of the Appointment to any other Person: That he has some Reason to think the Appointment of the Chief Justice was very offensive to the Puisne Judges—Says, he recollects a Clause in the Act of 13th Geo. III. directing the Manner of deciding when there is a Diversity of Opinions among the Members of the Board of the Council General.—And being asked, In what Manner that Clause is understood, and what is the Course of Practice on it at that Board? he said, It is understood by him, and has been more than once declared by him in their Consultations, that no Resolution of that Board is strictly legal, but that which is taken by the Votes of the Members in Council, or the Majority of them: The Committee will remember, that he did state to them, that it is nevertheless not unusual for Resolutions of the Board to be taken in Circulation; by which he means, that Questions are sometimes sent round in Writing, for the Opinions of the Members: It is a great Convenience in the Dispatch of Business, and is never practised but by common Consent, either directly given or supposed: That he thinks that this Practice has a Tendency, where a Difference of Opinion may subsist, to take away, or much impair, the deliberative Capacity of that Council; that he admits it is his Opinion that it is strictly illegal; in the Instance in Question, he should undoubtedly have insisted upon a Meeting of the Board, if he thought either that he could have advanced any Arguments in support of his Opinion more powerful than those which he delivered in Writing, or that any Arguments whatever from Mr. Wheler, or from him, would have affected the final Resolution of the Board; he was then and is now morally certain of the contrary: Sir Eyre Coote, who gave his Opinion last, had several Days to consider the Minutes and Arguments of the other Members.—And being asked, What is the Nature and Course of Business, that he thinks may make it necessary or very expedient, to act otherwise than as the Act directs? he said, The Detail of Business which comes before that Council is endless, and the Questions arising out of it infinite, all which must be determined by a Majority of Votes of the Governor General and other Members of the Council; it would not only be a most distressing Inconvenience to the Members, but in his Opinion physically impossible, to determine all these Questions immediately at the Board: At the Dispatch of the Ships particularly, when the Secretaries are employed in drawing up the General Letters, and other voluminous Papers for the Company, every Member of the Council has as much Business on his Hands as he can possibly do; and it is usual for a Recess of Ten Days or a Fortnight, in which Time there are no Meetings of the Council, yet numberless Questions arise in those Intervals, which must be instantly determined; he will venture to say, that no Men in Public Offices could labour more than they did, and the Climate so much against them—That he has no Idea a Rule could be formed to distinguish the Principles or Cases in which that Mode of Circulation may be prohibited, and those in which it may be permitted; that he thinks it should be left as it stands, and that it can produce no material Inconvenience, as long as the Right of each Member to insist on the Meeting of Council, if he pleases, is admitted—That there was a Board of Trade established at Calcutta, to take Charge of the Company's commercial Affairs, but they acted chiefly under the Instructions transmitted to them by the Court of Directors, through the Governor General and Council.

This Mode of giving Opinion by Circulation, which appears to have been adopted by the Governor General and Council in their Proceedings upon the Appointment of Sir Elijah Impey, induced your Committee to inquire of Mr. Francis, who was not in England when this Subject was before under the Enquiry of your Committee; accordingly Mr. Francis being asked, Whether at the Time the Resolution was taken by the Governor General and Council to resist the Process of the Supreme Court, it was the Result of a Debate at the Board with all its Members present, or whether their several Opinions were taken in Circulation? he said, That every Resolution of the Board, in that Business, as far as he can recollect, was taken in Council, all the Members, viz. the Governor General, Mr. Barwell, Mr. Wheler, and himself, were present; Sir Eyre Coote was at Lucknow, in the Province of Oude.—Being asked, Whether the Board was unanimous? he said, Always; their Unanimity declared to each other in this particular Point, was the Basis of their Proceeding.—And being asked, Whether any Debate or Difference of Opinion did afterwards arise at the Board, upon the Expediency or Legality of that Proceeding? he said, That every Step they took was duly and carefully canvassed at the Board; but he does not recollect that there was the smallest Difference of Opinion at any Time among them.—And being asked, Whether at the Time the Governor General and Council ordered their Attorney to withdraw their Appearance, in the Action commenced against them in the Supreme Court, at the Suit of Cossinat Baboo, and to disclaim the Authority of the Court against the Corporate Acts of the Governor General and Council, Mr. Barwell did not dissent from that Resolution? he said, Mr. Barwell left Calcutta Ten Days or a Fortnight before their Declaration was made in open Court; whether Mr. Barwell was apprized of their Intention to make such a Declaration, or not, he cannot positively say, but he knows with Certainty, that Mr. Barwell never did object in Council to any of

the Measures resolved on by the Governor General, Mr. Wheler, and himself; the Chief Justice, in Reply to their Declaration, did declare publicly from the Bench, that Mr. Barwell had told him, in private, he was convinced of the Illegality of their resisting the Process of the Court; and that he should not authorize the Company's Attorney or Advocate to withdraw his Appearance, into which he had entered jointly with the other Members of the Council: The Chief Justice added, that he himself was left Trustee for Mr. Barwell and his Children, and of course he ought to have known of the Intention of withdrawing their Appearance, if such a Step was intended, either by Mr. Barwell himself, or his Trustee. This Declaration made a very great Noise in Calcutta, and was supposed to affect Mr. Barwell's Reputation so deeply, that he had heard that some of his particular Friends took Pains to deny the Truth of it.—The Chief Justice, on the same Occasion, made some Declarations respecting a private Negotiation between Mr. Hastings and himself, regarding the Cossijurah Business; of which the Witness said, he had never heard one Syllable before, but of which he conceived he ought to have been informed; since, though they differed in many other Points, they had agreed to unite, and that *bonâ fide* together, in this particular Business. He immediately went to Mr. Hastings at his Country House, and stated to him the Declarations of the Chief Justice, as they had been reported to him; telling him, that he considered the Facts, if they were Facts, as incompatible with the Spirit and Meaning of their Agreement to act together on that particular Occasion—That Mr. Hastings gave him Explanations with respect to that Part of the Chief Justice's Discourse, which related to him; by which he was thoroughly satisfied he had not acted, nor meant to act unfairly towards Mr. Wheler and himself, though he thought, and still thinks, that he acted imprudently in having any Conversation with the Chief Justice, without their Knowledge; he also made him such Excuses as occurred to him for the Conduct imputed by Sir Elijah Impey to Mr. Barwell—That the Declaration of the Chief Justice from the Bench, was made about the Middle of March 1780, and his Appointment to the Sudder Adaulut, was recommended by Mr. Hastings about the End of September—That he knows nothing of any Reconciliation between them.

And Mr. Francis being afterwards further examined, said, That he landed at Dover the 19th of October last.—And being asked, How soon he saw the Chairman of the East India Company after his Arrival in London? he said, That on Saturday the 20th of October, he gave Notice to the Court of Directors of his Arrival; he went to Mr. Sullivan, the Chairman's House the same Day, and on the Monday he went to the Deputy Chairman, but he saw neither of them. Hearing nothing from the India House, or any Person belonging to it, except that the Secretary acknowledged the Receipt of his Letter, he went again to the Chairman's House on the 12th of November, and left a Message for him in Writing, requesting to see him; in consequence of which he was so polite as to come to his House next Morning; after that he wrote to him, and upon his laying his Letter before the Court of Directors, he was informed by the Secretary, that the Directors had requested the Chairman and Deputy Chairman, to receive from him any Information he might have to offer on the State of the Company's Affairs, (Vide Appendix, No. 6.) Accordingly, he went to the East India House, by Appointment, on the 19th of November, and delivered those Gentlemen a Paper of the Heads of that Information which he meant to give them, and gave them Explanations as he went on: And the Witness begged to be permitted to lay a Copy of that Letter before the Committee (Vide Appendix, No. 7.)—And being asked, What Enquiry was made of him by the Court of Directors, concerning the State of the Controversy between the Governor General and Council and the Supreme Court of Judicature when he left Bengal? he said, He had never been introduced to the Court of Directors, nor called upon in any Shape by them—When he saw the Chairman and Deputy, they asked him no Question whatever upon this Subject, nor, as well as he can recollect, upon any other—That the Chairman and Deputy Chairman assigned no Reasons why no Questions were asked of him upon this, or upon any other Subject; nor can he conceive what their Reason could be, unless they were apprehensive his Answers might bring forward Information, which they did not wish to see brought forward; and the Witness added, But this is mere Conjecture.—And being further asked, Whether a Letter which appeared in the Public News-papers, dated Calcutta, 12th October 1780, signed Philip Francis, (Vide Appendix N<sup>o</sup> 8) is a just Copy of any Letter written by him to the Court of Directors? he said, It is his Letter.—And it being stated to the Witness, That as he had stated in his Letter to the Court of Directors, that they had suffered the Company's fundamental Principles of Policy to be overthrown, their Instructions and Orders, in various Instances, to be disobeyed with Impunity; that they had condemned the Governor General, and another Member of the Council, in the strongest Terms; and charging also the Directors with various other Neglects of Duty, Violations of Promise, and other Matter of a criminal and serious Nature; he was asked, Whether he knew or believed that the Court of Directors ever received that Letter? he said, The Chairman told him they had—That the Chairman did not call upon him to support those Charges by Evidence, or to disclaim them as groundless and injurious to the Honour of the Court of Directors; but he, the Witness, told him, he was ready and able to make them good—That the Chairman mentioned the Letter to him, as the true and only Cause that he was not received by the Court of Directors, with those public Marks of Civility and Approbation to which he was otherwise intitled—That he did not tell him any Inquiry would be instituted into the Subject Matter of that Letter, but rather intimated to him, that the Court of Directors had no Intention to take any Notice of it whatever—That he adheres to the Sense and Terms of that Letter in every particular, and believes he can establish the Truth of his Assertions by sufficient Evidence—

That

That the Orders of the Company were not supported and enforced by the Court of Directors whilst he was in Bengal—That he thinks the Acts of Parliament relative to the Regulation of the East India Company in general, are not strictly regarded.—And being asked, What he held to be the principal Cause of it? he said, Men who have violated Orders, and who, as he thinks, have disregarded Acts of Parliament, have been censured, but not punished, and instead of being removed from their Stations, have been continued in them, by new Appointments—That the Conversation wherein the Chairman intimated to him that the Court of Directors did not intend to take any Notice of his Letter of the 12th of October 1780, passed at his House on the 13th of November last.—And being asked, Why, instead of the Proposition for a Salary to be annexed to the Appointment of the Chief Justice, as Superintendent of the Sudder Dewanee Adaulut, being postponed, it was not then negative? he said, The Governor General put no Question upon his own Proposition, it would have been irregular, and disrespectful to him for any other Member to have forced a Question upon it; it would have been also useless, because he, the Witness, was determined to leave Bengal immediately, and had made a public Declaration of his Intention to do so; of course, the Governor General being left with Mr. Wheler only, could have reversed the Resolution of the preceding Board, whenever he thought proper, by his casting Voice; if on the contrary he had been determined to remain in India, he should have taken an early Opportunity of moving for reversing the Appointment itself.—And being asked, Whether it would not have appeared a stronger Measure to the Court of Directors for the Governor General to reverse a Resolution not to agree to a Salary, and afterwards to carry the Appointment, when one Member of the Council had quitted his Seat, than to decide it by his casting Voice? he said, He could not tell how it would have appeared to the Court of Directors, because they had Instances before them of the same Nature, and full as strong, of which they did not take any serious or effectual Notice—That he remembers an Application made to the Judges soon after the Establishment of the Governor General and Council in Bengal, to ask how far they would allow Validity to the Proceedings of the Sudder Dewanee Adaulut, according to the Rules of its Institution before the Establishment of the Supreme Court of Judicature; and as well as he can recollect at so great a Distance of Time (being in July 1775) the Answer from the Judges was not deemed satisfactory by a Majority of the Board; their Answers to the Two First Questions seemed sufficiently direct; by the Third, which may be deemed the most material of the Three, they left them as much in Doubt as ever, as will appear by a Reference to their Letter (Vide Appendix N° 9.)—That he believes the legal Authority of the Provincial Dewanee Adauluts had at that Time in many Instances been called in Question by the Supreme Court.—The Witness then informed Your Committee, That he had received a private Letter from Calcutta, dated 6th January 1781, by which he is informed, that the Salary and Allowances recommended for the Chief Justice as Superintendent of the Sudder Dewanee Adaulut, of 5600 Sicca Rupees a Month, had been voted, and that an additional Allowance of 4,200 Sicca Rupees a Month, had also been voted for Office Charges.—And being asked, Whether he thinks the Correspondent who has sent him this Intelligence, is a Person well informed, and not likely to take up Reports from light Grounds? he said, He gives implicit Credit to the Letter; that it is from a Person on whose Veracity and Judgment he depends, is totally unconcerned in the Question, and he believes him well informed.

Then John Shakespeare, Esquire, late Chief of the Provincial Council at Dacca, being examined, said, That he served in India about 14 Years, in the Civil Service of the Company, and was from January 1778 to December 1780, Chief of the Provincial Council at Dacca—That he left India in December 1780—That he was at Calcutta, on his Way to Europe, at the Time Sir Elijah Impey was appointed Superintendent of the Sudder Dewanee Adaulut—that at the Time of the Appointment, he believes there was not an open Rupture between the Board and the Supreme Court—That there had certainly been such a Rupture before that Time—That he believes a personal Reconciliation had taken Place between the Chief Justice and the Governor General; it was generally understood so—that he knows of no Accommodation between the Board and the Supreme Court—that he cannot charge his Memory exactly with the Time it was understood the Accommodation between the Governor General and the Chief Justice had taken Place, as he was not then at Calcutta, but he fancies it must have been in June 1780—That the Accommodation did not appear by any public Act or Declaration of either Party; it was only generally reported, that they again visited, and were upon friendly Terms, which he believes they had not done for some Time. And being asked, Whether it was understood that this Accommodation extended to any Concession on either Side, of any Points which had been in Dispute between the Board and the Court? he said, That he never heard of any Concession on either Side—That he does not know of any Act of the Supreme Court subsequent to June 1780, by which it appeared that the Chief Justice had or had not conceded in any such Points—That he does not remember any Instance of Actions brought in the Supreme Court against the Members or Officers of the Provincial Courts and Adauluts, or against any Zemindars, Collectors, or Farmers, subsequent to June 1780, in the Province in which he presided; nor does he recollect to have heard of such Instances in any other of the Provinces. And being asked, Whether it was generally understood in the Districts, after June 1780, that the Authority of the Provincial Councils and other Servants of the Government, which had formerly been contested and denied by the Supreme Court, would be held in future more valid than it had been? he said, He believed that the Coun-

cil at Dacca, and the Officers acting under that Council, conducted their Business with more Confidence, and less Apprehension after that Period? And being further asked, Whether the Appointment of Sir Elijah Impey was considered as a Consequence of personal Reconciliation between Mr. Hastings and Sir Elijah Impey, and as an Act of private Favour from the former to the latter, or as a Measure intended to produce an Accommodation of their public Disputes? he said, If the Reconciliation had not taken Place, it is his Opinion that the Appointment would not have taken Place; but he believes Mr. Hastings to have been swayed principally in the Appointment, by the Motives expressed in his Minute on that Occasion, which he has seen; but he believes it was generally understood out of Doors, to be a Matter of Favour to Sir Elijah Impey—That he apprehends, that Appointment must tend to accommodate the public Disputes between the Board and Sir Elijah Impey, as Chief Justice of the Court; but he was a very short Time in India after the Appointment took Place—That he really does not know whether the Appointment was understood to have conciliated the other Judges, and should doubt much, in his own Opinion, if it would have such a Tendency—That he never heard of any similar Means of Conciliation being attempted with the other Judges—That he never heard of any personal Differences between the Members of the Board and the other Judges; and that he believes they continued visiting as usual—That he never heard that the Puisne Judges either acquiesced or objected to the Appointment of Sir Elijah Impey. And being asked, Whether the Appointment of the Company's Law Officer, or of any of the principal Servants, to that Office, would have been effectual, or not, for the Discharge of the Duties of the Office accepted by the Chief Justice? he said, It certainly requires great Experience and a perfect Knowledge of the Country Languages; and he humbly conceives, that the Duties of this Office can be better discharged by a Number of Men, than by any Individual—That it is an Office of such Magnitude as to require the whole Time and Attention of the Person presiding in it.—And being further asked, Whether it was his Opinion, that a Knowledge and Practice in the Laws of England would particularly qualify for that Office? he said, He should apprehend that the Knowledge of the technical and practical Part of the Laws of England would be of little or no Use—That he does not believe the Appointment of the Chief Justice would add to or diminish the Authority of the Provincial Adauluts. And being asked, Whether the Appointment, in his Opinion, would interfere with the Duties of Chief Justice in the Supreme Court? he said, He had already stated, that he humbly apprehended the Office of Superintendent of the Sudder Dewanee Adaulut would require the whole Attention of the Person presiding over it—That he has heard the Chief Justice speak both the Persian and Mors Language with some Degree of Fluency—That he apprehends, by the Constitution of both Courts, both before and since the Appointment of the Chief Justice, no Person who thinks himself injured by the Decision of the Sudder Dewanee Adaulut, can have Recourse to the Supreme Court—That he does not believe any Claim of Jurisdiction by the Judges over the Members of that Court, was ever brought in Question, between the Supreme Court and the Members of the Board, sitting as Members of the Sudder Adaulut. And being asked, Whether he supposes the Appeals so numerous, that the Governor General and Council could not have attended to the Decision of them in the Court of Sudder Adaulut? he says, That he cannot speak as to the other Divisions of Bengal; but he does not apprehend there were Ten Appeals in any one Year, from the Division of Dacca where he presided, which is generally allowed to be the most litigious Province—That merely as a Court of Appeal, he should apprehend the Supreme Council might go through the Business; but, if there is to be an original Jurisdiction in the Sudder Adaulut, he conceives a separate Appointment necessary. And being asked, After the Measures pursued by the Governor General and Council, to restrain the Jurisdiction of the Supreme Court over the Zemindars, and other Classes of Natives, What in his Opinion would be the Effect of this Appointment on the Minds of the native Inhabitants? he said, He rather supposes they would consider the Chief Justice's Acceptance of the Appointment under the Governor General and Council, which must be noticed to them by Precepts from the Governor General, rather as a Degradation of the Court—That this Appointment was a very unpopular A&t, and generally disliked by the European Inhabitants of Calcutta—That the Council General was certainly better adapted to settle Disputes between the Provincial Councils and the Provincial Adauluts, than the Sudder Adaulut under its present Establishment, admitting they had sufficient Time to go through the Business. And being asked, If the Business of the Chief Justice in the Supreme Court seemed to him to admit of much Leisure for the additional Business of another Office? he said, He was possibly at Leisure during the Vacations, as the Business of the Court during the Vacations was transacted by the Puisne Judges—That he believes the Chief Justice did not assign any Reason for accepting an Employment under the Governor General and Council, against whom he had preferred Complaints; but simply acquiesced in the Request of the Board to take upon him that Office—That he supposes the Inducement of Sir Elijah Impey, to accept of that Office, was an Extension of Power and Influence—That he apprehends it is intended to give a Jurisdiction to the Court of Sudder Dewanee Adaulut, as well in the First Instance as in all Cases of Appeal; and believes the Jurisdiction extends to all Persons and Causes relative to the Natives. And being asked, Whether there was not a Complaint, that the Supreme Court had been unfavourable to the Zemindars and other Natives, Officers of Justice as well as others? he said, In general they were much dissatisfied with the Proceedings of the Supreme Court—That Sir Elijah Impey was certainly a considerable acting Person, and of Weight and Authority in that Court. And being asked, Whether he believes, from his Knowledge of the Country and Mode of transacting Business there, that this Proposition was previously known to the Chief Justice before it was moved at the Board? he said, It was publicly talked of several Days before it was moved at the Board; and he apprehends there must have been a previous Communication.

**Communication.** And being asked, Whether this Appointment would have the Effect of deterring or preventing any Man from contesting the Right of acting in the Country Courts, when their Proceedings should be held under the Sanction and Patronage of the Chief Justice? he said, He thought no Person would be apprehensive of acting in the Provincial Adauluts under such Sanction and Patronage; nor does he conceive any Native would in this Case dispute the Powers of the Provincial Adauluts. And being further asked, If he conceived, that because the Chief Justice has accepted the Office of Superintendent, that the Puisne Judges have given up any of their Claims of Jurisdiction? he said, He only speaks of the Effect that the Appointment would probably have, not of any formal Renunciation of their Claims—That he believes it was a Principle invariably maintained by the Supreme Court, that every Person acting under the Authority or the Appointment of the Governor General and Council, either Native or European, was thereby rendered amenable to the Jurisdiction of the Supreme Court—That he never heard, that when the Chief Justice accepted this Appointment, any Exemption was admitted by the other Judges in Favour of him, or any other Officers of the Sudder Dewanee Adaulut—That each Judge has constantly exercised the Power of receiving Affidavits to the Jurisdiction of the Court, and issuing Process thereupon. And being asked, Whether it is his Opinion, that either of the Judges might receive Complaints, and issue Process against any Officer of the Sudder Dewanee Adaulut, in the same Degree as they used to do or might have done, before the Appointment of the Chief Justice to act as Judge in that Court? he said, He does not see how they could refuse to act upon Application being made to them—That he does not know if this Appointment was approved of by the other Judges, or if it was agreeable to them—That he never heard of Sir Elijah Impey having ever offered his Services to attend the Dewanee Court, in Quality of Assessor, not claiming a Voice, but simply to give Advice—That he never heard of Mr. Hastings having, during the Disputes with the Court, expressed an Opinion respecting the Justice or Moderation of the Chief Justice's Conduct towards the Country Courts, or the Members of them.—And being asked, If the Conduct of the Chief Justice in those Respects appeared to him just or moderate, or whether it was generally esteemed so? he said, If they had, he should not have subscribed to the Petition which had been presented to the House of Commons.—And being further asked, Whether he has heard that the Chief Justice had represented the Proceedings of Mr. Hastings and the Council General as unjust or mischievous to the Interest of the Country, or prejudicial to the Ease and Welfare of the Natives? he said, He does not recollect any particular Instances; but he has always understood that each have preferred Complaints against the other.—And being asked, Whether from the Time of the Separation of the Provincial Councils from the Provincial Dewanee Adauluts, he knows of any dangerous Competitions between those Two Authorities? he said, In Dacca none; but there have been violent Contentions between the Provincial Council at Patna, and the Superintendent of that Provincial Adaulut; mutual Accusations had been preferred; and when he left India, all Parties were attending at Calcutta, that their Disputes might be adjusted by the Governor General and Council—That the Contention was principally about the Extent of their Jurisdictions, and on Matters of Complaint by the Superintendent against some Members of the Council, for Mal-administration—That the Natives complained in many Instances, of the Officers of the Supreme Court, through the Dacca Board, to the Supreme Council, as will appear by the Records—That the Provincial Courts, particularly at Dacca, acted with more Confidence and less Apprehension after June 1780, from an Idea that the Powers of the Supreme Court would not be exercised against them whilst acting in their several Stations; that there was no public Declaration to that Effect, from the Supreme Court, that he knows of; he speaks of the Operation that the Reconciliation had upon his Mind.—And being asked, Who or what was the Cause of the Hazards that the Superior of the Provincial Dewanee Adauluts, or Councils, were alleged to be exposed to in the Exercise of their Functions? he said, They apprehended personal Actions in the Supreme Court, and he himself was threatened with one by Lawyers of that Court for doing his Duty as Superintendent of the Court of Dewanee Adaulut at Dacca.—And being further asked, Whether the Supreme Court countenanced those Actions? he said, It appears that they admitted them, and the Committee are already in Possession of Mr. Justice Hyde's Letter to Captain Cowe, respecting the Dacca Dispute, where Mr. Peat, the Attorney, shot the Brother of the Fouzdar—That Mr. Hastings attributed the Disregard that had been shewn to the Authority of the Provincial Courts, to the Interference of the Supreme Court and its Dependents—After the Reconciliation had taken place, there was no Measure taken with Regard to the Mahomedan Lawyers confined in the Gaol of Calcutta, that he knows of; nor does he know of any Thing done towards an Indemnity to Mr. Swainston, for the Imprisonment he had suffered.—And being asked, Whether it was supposed that Mr. Naylor's Death was occasioned or accelerated by his Imprisonment? he said, He visited Mr. Naylor when he was in Prison; he was then complaining, and had been ill some Time, of a Dysentery, but he does not think his Confinement either occasioned or accelerated his Death; though his Situation was certainly uncomfortable, if not unwholesome—That Mr. Naylor was confined in a Tent, pitched within the Fore Walls of the Prison Yard; that the Heat was intense, and the Place altogether very disagreeable; that his Wife died some Time before him, whilst he was in Prison, and he left One Child—That he never heard of any Compensation being made to the Orphan Child of Mr. Naylor, upon the Reconciliation between Sir Elijah Impey and the Governor General, for the Sufferings of the Father by Imprisonment by the Supreme Court; and that the Imprisonment of Mr. Naylor was deemed a hard Measure in that Country.

Major John Scott being examined, said That he served in India Fifteen Years—That he is now a Major in the Company's Service on the Bengal Establishment—For the last Two Years he was Aid du Camp to the Governor General, and officiated as one of his private Secretaries, except the last Three Months, when he commanded a Battalion of Sepoys in the Garrison of Chunargur—That he left Calcutta the 9th of January 1781, and Madras the 18th of February following; that he arrived at London the 18th of December—That the Appointment of Sir Elijah Impey to the Office of Superintendent of the Sudder Dewanee Adaulut, had taken place before he left Calcutta, but whether the official Arrangements were compleated or not, he is not certain—That he believes Sir Elijah Impey had not then entered upon the Duties of his Office—That there was no Salary annexed to the Office before he left India, to his Knowledge; but he did hear in the Course of Conversation, that the Expences of the Office would be to the Company about 5000 Rupees a Month—That he heard of this Appointment as he was coming down from Chunargur and at Calcutta—That he did receive Letters from Bengal while he was at Madras; they did not inform him of any Salary being annexed to the Office—He had a very long Letter from Mr. Hastings, dated the 29th of January 1781, describing the political Situation of Bengal at that Time, and some internal Arrangements which had been formed at Calcutta, but no Mention was made of any Salary.—And being asked, Whether he knew of its being in Agitation to annex a Salary, when he left Calcutta? he said, That he did understand that 5000 Rupees a Month was to be the Expence of this new Establishment, but whether the Whole or any Part of this Sum was for Sir Elijah Impey himself, he could not tell—That the Governor General and Council could undoubtedly annex a Salary to the Office, without its coming to his Knowledge; but he begs Leave to say, that Mr. Hastings has appointed him his Agent in England for the Purpose of explaining any Part of his public Conduct, which should be an Object of Enquiry (Vide Appendix N° 10), and to enable him to do this, he has furnished him with Copies of the most material Proceedings in Bengal for the last Three Years; amongst the rest, he has Copies of the Proceedings of the Supreme Council, when Sir Elijah Impey's Appointment was proposed by the Governor General; and he does not find any Mention of a Salary—That he believes the Date of the last Proceedings of the Council General, of which he is furnished with Copies by the Governor General, is the 8th of January 1781, and that the Date of the last Proceedings, of which he is in Possession, relative to Sir Elijah Impey's Appointment, is the Day of October 1780—That he conceives the Motives of the Governor General in the Appointment of Sir Elijah Impey, were pure and disinterested; that he conceived the Interest of the East India Company had been very materially affected in Bengal, by the unfortunate Contention between the Council General and the Court of Judicature, and that Sir Elijah Impey's Appointment would put a Stop to it; he also thinks there was another Object in view, which was, the equal Distribution of Justice throughout the Provinces.—And being asked, Whether at the Time of the Appointment of Sir Elijah Impey, he knew the State of the Dispute between the Governor General and Council and the Supreme Court? he said, He believed the Chief Justice was uniform in his Declarations, that he would support the Authority of the Court to the utmost of his Power—That he does not recollect any Instances subsequent to the Affair of Cossijurah, in which the Proces of the Court had been resisted by the Council General—That he is pretty clear, that no Claims of Jurisdiction which had been disputed, had been relinquished by the Supreme Court—That he apprehends the Consequences of the Dissentient between the Council General and the Supreme Court, and the Peace of the Settlement, and the ordinary Course of Justice, to have required a Remedy at the Time of the Appointment.—And being asked, Whether he apprehended that they rendered an immediate Remedy desirable? he said, They certainly did; because the Company were at that Time engaged in a very expensive War with the Marattas; they had just received Intelligence of the Invasion of the Carnatic, the Defeat of a very considerable Detachment there, the Retreat of Sir Hector Monro to Madras, and were apprehensive of the Arrival of a French Armament from the Mauritius; it was necessary to send 600 Europeans, ill as they could spare them, from Bengal to the Coast, and a very considerable Supply of Treasure; under these Circumstances, he thinks, it was necessary to preserve our remaining Resources in Bengal, as compleat as possible; and he speaks with Confidence, that the Revenues of the Provinces would have been very materially affected, and the Minds of the Natives, as well as the Europeans, greatly agitated by a Continuance of those Dissentions—That he knew of the Governor General and Council having sent a Petition to Parliament, and having made Representations to the Court of Directors, upon the Subject of these Disputes—That in Times less critical he should suppose it would have been the Duty of Mr. Hastings to wait for a Determination from England, before he should take any Measures of his own upon the Subject, but not as they were then situated—That he conceives the Resistance made by the Council General to the Proces of the Court, and the Orders given by the Council on the Affair of Cossijurah, to have, in some Measure, but by no Means completely, removed the ill Consequences of those Dissentions, by deciding the Question for a Time by the Supreme Power of the Council—That he thinks the Country could not have continued with Safety in its actual State, after the Affair of Cossijurah, until a Decision could be had from England, because the Officers of the Supreme Court paid no Respect either to the Religion or the Prejudices of the Natives in executing the Proces of the Court, and that there would have been as many Proceses as heretofore issued by the Court.—And being asked, Whether the Determination of the Council General to resist such Proces, would not have prevented their ill Effects? he said, the Interference of the Council General, would prevent the Gaol of Calcutta from being filled with the Natives, but their Religion would be affected, and their Prejudices would be hurt, by the Mode in which those Proceses

cesses would be served—That he thinks the Knowledge the Country had of the Council General's Determination, to resist the Process of the Court in certain Cases, would not have prevented frequent Applications to the Supreme Court; in a Country so extensive as Bengal, there must be many Natives who would rather wish to apply to the Court from a View of impeding rather than forwarding Justice—He thinks, that the Appointment of Sir Elijah Impey was not intended as permanent; he believes Mr. Hastings intended it as a temporary Measure, it being very uncertain when the Decision of Parliament would be received; that Appointment could by no Means, in his Opinion, preclude the Effect of any Determination from England, when it should arrive—That he thinks this Appointment put a complete Stop to the Dissentions between the Council General and the Supreme Court—He believes the Appointment was agreeable to the rest of the Judges; he cannot speak with Certainty; he never heard to the contrary, which he thinks he must have done, if it had been disagreeable—That he understands the Dissention between the Governor General and Council and the other Judges to be at an End—He does not know of any Advantage accruing to the other Judges from this Appointment of Sir Elijah Impey.—And being asked, In what Manner he conceived the Appointment of Sir Elijah Impey to have produced a Reconciliation with the other Judges? he said, He knew no Reason why it should have affected the other Judges; but he always considered Sir Elijah Impey as the most solicitous to carry the Powers of the Court to their utmost Extent—That he does not know of any Advantage lately granted by the Governor General and Council to the other Judges, but he heard before he left Calcutta, that the Governor General and Council and the Judges had framed some Laws, which were very much wanted, for the better Regulation of the Police of Calcutta; he believes Sir Robert Chambers is placed at the Head of the Office of Police, from whence some pecuniary Advantages might occur, but the Expence is to be defrayed by the Inhabitants—That he conceives the Opinion of the European Inhabitants of Bengal, on the Appointment of Sir Elijah Impey, to be, that it would promote an equal Distribution of Justice, that it would prevent Appeals to the Supreme Court, and that it would prove a very considerable Saving to the East India Company; he believes the Company's Servants did not approve this Appointment, because they thought it would materially affect their Authority, but by what he could understand, it was generally thought by the British Subjects at large, that it would be attended with very beneficial Effects to the Natives, and to the East India Company—That he conceives it would produce a Saving to the East India Company, by a very considerable Diminution of their Law Charges, and by preventing Appeals to the Supreme Court on Matters of Revenue, which, as he understood, were attended with a very considerable Deduction of the Revenues; he only speaks from what he has heard, being totally ignorant of Matters of Revenue and Law—That he does not know the general Amount of the Company's Law Charges; he has heard it asserted in Conversation, that the Expences of the Supreme Court, and the Loss of Revenues in consequence of Appeals made to that Court since its Institution, amounted to about a Million Sterling—That he conceives this Appointment would affect the equal Distribution of Justice in the Provinces by the Company's Servants, who preside at the different Country Courts, having their Decisions appealed to Sir Elijah Impey—That the same Appeals were undoubtedly made to Sir Elijah Impey by the Suits in the Supreme Court; but he imagines that Sir Elijah Impey in his Decisions was bound by the strict Letter of the English Law, which he does not understand he is by his present Appointment; and that it was the vexatious Forms of the Supreme Court, which the Natives complained of, and not of the Justice of Sir Elijah Impey or the Court in their Decisions—That the Members of the Provincial Adauluts feel themselves much more secure, to his Knowledge, in the Discharge of their Offices, in consequence of this Appointment; before the Appointment took place, they were afraid to act at all, apprehensive they should be obliged to answer from their private Fortunes for any Decisions which should be reversed by an Appeal to the Supreme Court—That he does not understand that Appeals regularly lay from the Provincial Adauluts to the Supreme Court; but after the celebrated Patna Cause, he conceives, that under one Mode or another, every Native of the Provinces was at the Pleasure of the Judges amenable to the Power of the Court—That he left Calcutta, to proceed to Chunargur the 23d of June 1780, and returned to Calcutta the 13th of December, 1780—That he was not in Calcutta at the Time the Appointment of Sir Elijah Impey was made.—And being asked, From what Channels he collected the Information he had given relative to this Appointment, and the Effects of the Appointment? he said, From Conversation at Chunar, Benares, and on his Way to, and in, Calcutta—That the Appointment of Sir Elijah Impey would effectually prevent the Interference of the Supreme Court in Matters of Revenue, which was the grand Article of Advantage to the Lawyers, and that they must either get into the Army, or return to England; and some of the Attorneys of the Court had actually got into the Army before he left the Country.—And the Witness said, What Mr. Hastings told him, he speaks positively, "that he was sensible the Appointment would be misrepresented, and that he should incur much Odium by it at Home, but that he trusted to the Rectitude of his own Intentions and the beneficial Consequences which he was sure would result from it, for his Justification."—That there were some Attorneys of the Supreme Court, who came out originally Cadets, and quitted the Army for the Practice of the Court, and in the late Want of Officers, they have been received again into the Army, upon the Establishment, as Cadets—That he does not know that there ever was any Dissension between the Puisne Judges and the Governor General and Council, except that in the Cossijurah Affair, they agreed with the Chief Justice.—And being asked, As he was come on the Part of Mr. Hastings, to explain every Part of his Conduct, what Means he has of explaining what happened,

when he was not at Calcutta ? he said, On his Return to Calcutta, he had Access to the Records, and was furnished with Copies of all the material Transactions which happened between the 23d of June and the 13th of December—That the Appointment of Sir Elijah Impey had then taken place—That he does not know of the Powers and Constitution of the Court of Sudder Dewanee Adaulut, as they are to be exercised by Sir Elijah Impey ; he understands that it is a Court of Appeal from the Decisions of the Country Courts of Judicature in civil Causes, and no more—He does not know that Mr. Hastings had declared, that the Opinion now given by him was erroneous and ill-founded, nor does he know what Measures have been taken to prevent the clashing of Jurisdiction between the Court of Sudder Dewanee Adaulut and the Supreme Court—That Mr. Hastings certainly thought himself in the Right in opposing Sir Elijah Impey, who was the most solicitous to carry the Powers of the Court to its utmost Extent.—And being asked, Whether Mr. Hastings thought Sir Elijah Impey had exceeded the legal Extent of the Powers of the Court, or endeavoured to stretch those legal Powers beyond the Extent of the Purposes for which they were given ? he said, Mr. Hastings, he could say with Certainty, was of Opinion, that the British Parliament did not mean to subject Natives of India, circumstanced as the Rajah of Cossijurah was, to be amenable to the Jurisdiction of the Supreme Court ; and he was confirmed in that Opinion, by the Sentiments of the Advocate General—That he does not know that Mr. Hastings took the Advocate General's Opinion, or that of the other Judges, or any other Law Opinion, before he proposed this Appointment in Council—That the Chief Justice had not, to his Knowledge, made any Declaration concerning his Change of Opinion of the Extent of the Powers of the Supreme Court, either before or since his Acceptance of the Appointment, nor the other Judges as he knows of—That he believes Mr. Hastings has not changed his Opinion concerning the mischievous Consequences of those Powers, and of their being contrary to the Spirit of the Act which appointed them ; because he well recollects Mr. Hastings telling him, before he left Calcutta, that he hoped the British Parliament would take the State of the Supreme Court of Judicature into Consideration, and regulate their Powers—That he believes the Patna Cause was one of those where Mr. Hastings considered the Supreme Court having exceeded its Powers, and acted oppressively ; and he never heard that there was a Second Opinion upon it in Bengal, except by the Gentlemen immediately concerned in the Supreme Court—That the Patna Magistrates were confined in the Gaol of Calcutta upon a Judgment, supposed to be excessive and beyond their Powers to pay.—And being asked, What was Mr. Hastings's Opinion upon this Transaction ? he said, He does not remember hearing him give an Opinion, but the Case was so plain, that he must have thought as every body else did—That Sir Elijah Impey, never to his Knowledge, acknowledged that he was mistaken in that Business, or made or tendered any Satisfaction to the Parties who suffered under that Judgment ; on the contrary, he takes it for granted he acted in that Manner, because he thought himself in the Right.—And being asked, Whether Mr. Hastings thought, that exclusive of the legal Merits of this Question, that Sir Elijah Impey conducted himself in this Case, and in other Cases in which Mr. Hastings opposed him (sometimes by defending the Parties at Law, and sometimes by opposing the Process of the Court by a Military Force) with Temper, Prudence, and Moderation ? he said, That he believes Mr. Hastings thought, that the Conduct of the Court was very violent—That he understands, that by the Nature of the Court of Sudder Dewanee Adaulut, the Chief Justice has some Superintendency by Appeal, or otherwise, over the Natives of the Country—That he does not know that Sir Elijah Impey has expressed a very slight Degree of Regard and Attention to the religious Rights, Manners, Customs, and Laws of the Natives ; but the Officers acting under the Authority of the Court at Cossijurah, did undoubtedly proceed to Violences, which might have been attended with very serious Consequences.—And being asked, Whether it did not appear to the Minds of the British Subjects, or to the Natives in general, or to Mr. Hastings in particular, that a Contempt of those Laws and Usages had been frequently discernible in the Proceedings of the Supreme Court ? he said, Yes, he can answer for the Natives and British Subjects ; he was one of 648 who signed a Petition to Parliament to remedy the Grievances complained of, which were undoubtedly as the Question states—That Mr. Hastings never expressed a different Opinion to him—That he never heard it surmised, that Sir Elijah Impey dissented from the other Judges of the Court on those Matters which gave so much Offence ; on the contrary, he believes, he was full as active as any of the other Judges.—And being further asked, Sir Elijah Impey's Opinions being unretracted, and he still remaining Chief Justice of the Supreme Court, how did his Appointment to the Sudder Dewanee Adaulut operate to put an End to the Disputes between the Government and that Court ? he said, How it could operate he does not know ; but it was looked upon, the Disputes were at an End—That he knows Sir Elijah Impey and the rest of the Judges personally, and that is all—That he never heard them talk upon this Subject in his Life—That from the Time the Order of the Governor General and Council was issued, not to obey the Process of the Supreme Court in the Cases therein described, no Cause that he knows of was agitated in the Court, which might give Rise to another Interposition of the same Nature.—And being asked, Whether a Salary was not proposed in Consultation at the Board, on the 24th of October 1780, for Sir Elijah Impey, by Mr. Hastings ? he said, He believes he has no Copy of the Proceedings of that Day.—And being asked, As he was private Secretary to Mr. Hastings, how it comes that a Matter of such Consequence did not come to his Knowledge ? he said, When the Appointment of Sir Elijah Impey took Place, he was doing Duty at the Garrison at Chunar ; he came to Calcutta the 13th of December, and left it the 9th of January following. And being further asked, As he was near a Month in Calcutta, and that Two Months after the Appointment had taken Place, how it came that Mr. Hastings did not mention to him a

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Matter of that Importance? he said, He conceived that Mr. Hastings supposed that he had a Copy of the Proceedings of the 24th of October; and that he alluded amongst other Things to the Salary, when he told him he supposed he should incur much Odium by the Measure—That he really did not know how it came, that Mr. Hastings (having charged him with his Defence against that Odium, as well as other Matters of Charge) made no Mention at all of the Salary, except a remote Allusion; but he believes most solemnly that Mr Hastings trusted to the Rectitude of his own Intentions, the Ease of the Natives, and the Saving to the Company, for his Justification. And being asked, Whether he gave him those Things in Charge to allege for him without mentioning the Salary, the Amount of it, or any other Particular relative to it? he said, He dare say Mr. Hastings thought that he had a Copy of that Consultation in which a Salary is proposed;—he had no particular Instructions respecting this Appointment of Sir Elijah Impey; but he begs Leave to read Part of a Paragraph of a Letter from Mr. Hastings to him, dated Fort William, 5th January 1781; and received by him that Day.

“ I rely on your Friendship for your general Attention to such Points as may in any Manner affect my Authority, or the Interest and Credit of my Administration.”

And being asked, Whether, as no particular Discourse passed on this Subject between Mr. Hastings and him, he was furnished with any written Documents before he left Calcutta, or afterwards, by Mr. Hastings, concerning this Salary? he said, He never was; but he is convinced that Mr. Hastings thought he had the Subject compleat before him—That he cannot conceive how this Paper alone escaped his Researches and Mr. Hastings's Communication; except that the Proceedings with respect to the Salary might have been entered at a Board of Inspection or Board of Revenue; and, in the Hurry of his coming away, he brought no Papers from either of those Offices—That he received some Papers from Mr. Hastings whilst he was at Madras, the 29th of January 1781—That undoubtedly those Twenty Days were sufficient for Mr. Hastings to furnish him with the Documents which had been omitted, and which might tend to explain a Conduct which he conceived was likely to subject him to Odium in England, if Mr. Hastings had supposed that he had not had the Subject compleat before him—That he has not had any verbal Communication, or Communication by Letter, with Mr. Hastings, nor written Document concerning the Proposition of that Salary; he never entertained a Doubt but that a Salary would be annexed to such an Office—That there never had been a Discontinuance of Friendship and Intimacy, or mutual Visits, between the Governor General and the Chief Justice—The only Time he ever supped at Sir Elijah Impey's, was with the Governor General and his Family in the Height of the Disputes in the Cossijurah Cause—That he does not know whether Sir Elijah Impey's private Opinion concerning his Appointment to the Office of Superintendent of the Sudder Dewanee Adaulut was taken by the Governor General, but he should imagine that he did communicate it to Sir Elijah Impey.—And being asked, If he thought a Business of such Importance, as a Salary to that Office, could be proposed by the Governor General without a previous Communication with the Chief Justice, or proposed at the Board, if he had expressed his Disapprobation of it? he said, Yes, he thought from Delicacy it might have been proposed without Communication; nor does he conceive, that if Sir Elijah Impey had expressed a pointed Disapprobation, that Mr. Hastings would have proposed it.—And being further asked, In what the Delicacy consists of the appointing a competent Salary for the Discharge of an honourable and very laborious Office, as it is stated to be in the Minute of Appointment? he said, He does not know; in his Opinion, he thinks it would have been an improper Conversation between the Governor General and the Chief Justice; nor does he believe that a Conversation concerning a Salary was ever held between the Governor General and Sir Elijah Impey—That he had heard it asserted in Conversation, that a Salary was either fixed or intended, but he had no Doubt one was intended—He thinks that it could not be a Matter of public Conversation at Calcutta, and Sir Elijah Impey not know it—That he thinks such a Minute, so essentially concerning the Chief Justice, could not be entered on the Consultation Books, without being afterwards communicated to Sir Elijah Impey; because it was asserted in one of the Minutes, that to accept of a Salary for the Office would be illegal; he did not hear that Sir Elijah Impey had declared any Opinion concerning the Legality or Illegality, Propriety or Impropriety, of it—That he does not know whether the Natives understood that he was to have a Salary or not, as he never conversed with any of them, but the British Subjects undoubtedly did—There was a Suit instituted in the Supreme Court on the Part of a Native, called Coffinaut Baboo.—And being asked, Whether the Chief Justice did not declare, That Coffinaut Baboo had not applied to the Supreme Court for Justice, until he had been denied it by the Governor General and Council in their Revenue Department? he said, He does not recollect; but he thinks it probable—That he does not know whether the Judges considered the Conduct of some of the Company's Servants in that Cause as corrupt and partial—That he heard that Coffinaut Baboo had withdrawn his Action from that Court.—And being asked, Whether the Chief Justice did attribute his Desertion of the Suit to a Conviction of the Invalidity of his Claim, or to the Dread of the Powers of the Governor General and Council? he said, He does not know; but if he was to give an Opinion, he should think the latter.—And being further asked, What was done in the late Compromise, to secure Coffinaut Baboo that Justice which, in the Chief Justice's Opinion, had been denied to him by the Governor General and Council, and which it was his Opinion also, that none but the Supreme Court could give? he said, He cannot tell; but he understood that the Governor General and Council had decided to the Satisfaction of Coffinaut Baboo—That he never

heard whether any Thing was done to support the Honour and Authority of the King's Commission, which in that Case was supposed to have been violated—That he does not know that any Satisfaction was given to the Court that the same Power which, in the Chief Justice's Opinion, had refused Justice to Cossinaut Baboo, and obliged him to withdraw his Suit, had not also obliged him to appear contented with what the Governor General and Council had allotted him.—Says, He considers the Letter of the 5th of January 1781, which he received from Governor General Mr. Hastings, as his Appointment to be his Agent in England; and Mr. Hastings has notified it publicly in the General Letter to the Court of Directors—That before he left Calcutta, on the 9th of January 1781, he had not any Information, that a Salary was voted by the Council General to the Chief Justice, as Superintendent of the Sudder Dewanee Adaulut;—he does believe that a Salary has been fixed, from what he has heard in Conversation at Calcutta, or was about to be fixed; but upon looking over his Copies of Proceedings, and not finding a Salary mentioned, he was led to believe that all the Arrangements, including the Salary, had not been finally concluded.—And being asked, If he had any Doubt upon his Mind that a Salary was fixed before his Departure from Calcutta? said, That he has a Doubt whether it was fixed or not when he left Calcutta, because it was not mentioned in the Copies of the Proceedings; but he has no Doubt it was intended.—And being asked, Whether he had any Doubts *now* of its having since taken place? he said, As a Difficulty had been stated in point of Law, he had, and has still, his Doubts; but as far as his Intelligence goes, he should imagine the Appointment and Salary had taken place;—he does not immediately recollect by whom that legal Difficulty was started, but he thinks it is in one of the Minutes of the Council—That he imagines the Judges of the Supreme Court must have known of his Departure from Bengal, charged with Dispatches from the Governor General of a later Date than any which had been sent by the Company's Ships, because it was a Matter of public Notoriety mentioned in General Orders, and in the Calcutta Gazette—That neither Sir Elijah Impey, nor any of the other Judges, did desire him to carry any written Dispatches, or to give any Explanation on their Behalf, on the Subject of the Compromise which had lately taken place in Bengal; Sir Elijah Impey arrived in Calcutta the Day before he came away; Two Danish East Indiamen sailed at the same Time with several English Passengers on Board—That he does not know whether any Person is charged with Dispatches from them—That Sir Elijah Impey's Arrival was from Moorshedabad at Calcutta; that the Post travels from Calcutta to Moorshedabad in Thirty Hours, and goes every Day—That he was charged with Public Dispatches to the Court of Directors; they were dated between the First and the Ninth of January 1781—That he considers Sir Elijah Impey's Appointment to be held during Pleasure—He does not know of any other Motives than those he has assigned, which induced the Council General to appoint Sir Elijah Impey to superintend the Sudder Dewanee Adaulut, and he firmly believes there were none—Nor does he know of any other Motives than those he has assigned, that induced Sir Elijah Impey to accept the Office—That Mr. Hastings and Mr. Wheler were the Persons that composed the Council General after the Departure of Mr. Francis to Europe; Sir Eyre Coote was gone to the Coast upon Duty.—He thinks he has heard that the Disputes between the Provincial Councils and the Superintendents of the Dewanee Adauluts, was one Reason assigned by Mr. Hastings for proposing the Appointment of Sir Elijah Impey; that he cannot positively tell whether such Disputes did exist, but he should suppose they did—He perfectly well recollects hearing that it was impossible that the Superintendents of the Provincial Courts of Adaulut should be able to perform their Offices without some new Regulations; and he recollects one of the Gentlemen who was Superintendent of a Provincial Court, saying, how difficult it was to perform the Duties of it; and the Appointment to his Knowledge was declined by one of the Company's Servants for that Reason.—And being asked, If such Disputes did exist betwixt the Members of the Provincial Councils and the Superintendents of the Provincial Dewanee Adauluts, being the Company's Servants, what Authority does he think most competent to decide effectually upon such Disputes? he said, The Authority of the Governor General and Council immediately, or the Persons to whom they delegate their Authority.—And being asked, If the future Welfare of every Servant of the Company does not depend upon his due Obedience to the Orders of the Council General? he said, It would, if the Government was firmly established, but he has seen no fixed Government in Bengal for Seven Years, either from Changes or Rumours of Changes—That the Council General have a Power of recalling from his Station, and suspending from the Service, any Servant of the Company; which Power has been frequently exercised—That the Chief Justice has not any Power over the Servants of the Company, except what is given him by Charter for the Administration of Justice in due Course of Law—He is not sufficiently Master of the Subject to know what Obedience he can exact and enforce to his Decisions as Judge of the Sudder Dewanee Adaulut—He does not know to which Authority that of the Governor General and Council, or that of the Chief Justice, the Members of the Provincial Councils, and the Superintendents of the Provincial Dewanee Adauluts, will pay the most Respect, but in his own Case, he should certainly obey the Orders of the Governor General and Council—As far as he can recollect, the general Opinion of the Officers of the Army, upon the Chief Justice's Proceedings against Lieutenant Colonel Achmuty and Lieutenant Bomford, for their Conduct at Cossjurah, in Obedience to the Orders of the Governor General and Council, was, that his Conduct was very violent.—And being asked, What Opinion did the Officers of the Army entertain of their own Situation, when, if they did not obey the Orders of that Power from which they received their Commissions, they were liable to be tried by a General Court Martial for Disobedience of Orders, and if they did obey those Orders, they acted against the King's Charter of Justice,

Justice, and were prosecuted for a Contempt of the King's Authority by the Judges of the Supreme Court? he said, He believed they thought their Situations dangerous; but he thinks the Officers in general would have obeyed the Orders of the Governor General and Council at all Events—That he never heard there were any Consultations held by the Officers of the Army under those very particular Circumstances; but it was a Matter of general Conversation and Alarm, and he never heard a Difference of Opinion upon the Subject.

Your Committee then called again before them, Philip Francis, Esquire; who was asked, If he was acquainted with the Establishment of an Ordinance of Police that had taken place at Calcutta, at the Head of which Sir Robert Chambers was placed, and from which he might derive pecuniary Emoluments? he said, He was; and that a little Time before he left Calcutta, a Plan for the future Regulation of the Police of that Town, and other Purposes, had been transmitted, in the Form of an Ordinance, by the Governor General and Council, to the Supreme Court, in order to be registered there, and finally passed, as the Law directs—For the Execution of this Ordinance it was necessary that certain Commissioners should be appointed; and as the Object of it was connected with and materially affected the Interests of the Householders at Calcutta, it was thought right that the Commissioners should be taken from among the principal British Inhabitants—Sir Robert Chambers is an Inhabitant and Householder in Calcutta, having vested a considerable Part of his Fortune in the Purchase of Two principal Houses; it was therefore very natural and proper, that he should be requested to be One of the Commissioners: Having accepted of the Employment, his Rank of course placed him at the Head of the Commission: But he declares, that he never did hear, that he or any of the Commissioners were to be or could be benefited, in any Shape, by holding that Office; no Salary, or Allowances, or Fees whatsoever for the Commissioners, was ever mentioned or thought of to his Knowledge.—And being further asked, If he knows, from the latest Advices he has received, that any Office of Power or Emolument had been proposed for Sir Robert Chambers by the Governor General and Council? he said, He has no Knowledge of any such Thing, directly or indirectly.

The Evidence respecting the State of the Gaol at Calcutta, having been omitted to be inserted in the Judicature Report made in the last Session, Your Committee have thought it necessary to subjoin the same to this Report, in Appendix N° 11.

YOUR Committee being directed to report their Observations on the State of the Administration of Justice in Bengal, and instructed to consider how the British Possessions in the East Indies may be governed with the greatest Security and Advantage to this Country, and by what Means the Happiness of the Natives may be best promoted; have thought it expedient, as a Preliminary, to take into Consideration the Proceedings of the Court of Directors of the East India Company; particularly where those Proceedings related to the Object of their original Inquiry.

The Interposition of the General Court of that Company, in the Management of its Affairs, is only occasional. The Court of Directors is the sole, ordinary, and standing Authority which exists, for the Regulation and Control of their Servants; a numerous Body of Men, possessed of high and extensive Powers, and exercising them at a very great Distance from the Source and Seat of Government.

Your Committee therefore consider the securing an uncorrupt and vigilant executive Administration, in this, the ruling and presiding Part, as a Fundamental in every Plan which proposes Reformation in the subordinate Oeconomy of the British Affairs in India. To render the Company's Servants attentive to their Duty, the Directors should be rendered observant of their own.

It would be highly agreeable to the Wishes of Your Committee, to discover, by their Inquiry, that mere Legislative Regulation might be as effectual for that Purpose as Criminal Proceeding. It was from a Preference to lenient Methods (a Preference founded rather in a Disposition towards such Methods, than from any Experience of their Efficacy) that a Bill of Regulation, attended with Indemnity, was adopted in the last Session. The Treatment which that Bill has met with, when passed into an Act of Parliament (if the Matter rested upon that Example alone) has more than sufficiently evinced, that to multiply Statutes without a strict Attention to their Execution, serves only to increase the Audacity of Delinquents, and to harden them in their Defiance of an Authority, which supports itself only by a feeble Repetition of Orders, which had been habitually despised.

1st. Your Committee observe, that Lawrence Sullivan, Esquire, Chairman of the Court of Directors, having been principally concerned in a Petition from the said Court to this House, against several Proceedings of the Supreme Court of Judicature in Bengal, was in a particular Manner called upon to co-operate in the Redress of the Grievances therein complained of, and to forward the Execution

Execution of the Act, concerning the Bengal Judicature, which had been made in consequence of the Allegations of that and of other Petitions to the like Effect.

2d. That one of the principal Articles of Grievance which appeared on the Examination into the Merits of those Petitions, related to the Sufferings of certain Native Magistrates of the City of Patna, and of a certain Suitor in the Provincial Court held in that City. And it appears to your Committee, that the Matter of Grievance was well established by Evidence. A Clause in the Judicature Bill of last Year, was inserted for a pecuniary Compensation to the Sufferers. This Clause was given up, on Mr. Sulivan's Engagement for himself and the Court of Directors, that the Sums contained in the Clause, should be paid by Order of that Court. That Engagement, Your Committee conceive to be in the Nature of an Agreement between Parties in a private Bill; without a due Observance of which, Business cannot be well conducted in Committees upon such Bills. Relief to Individuals among the Natives of India, may become a necessary Step towards general Redress, and general Satisfaction. Yet Circumstances may render it advisable, that the Company, entering into the *Views* of Parliament, should take such Relief upon itself, rather than that it should be made the Object of an *Act* of Parliament. In such Cases, the Directors ought religiously to keep their Faith. Mr. Sulivan himself has on his Examination declared, that he regarded it as his Duty, to take Care that the above Compensation should be made, considering it as the Sense of the House.

3d. That Mr. Sulivan did wilfully omit to enter the Purport of the said Agreement in the Minutes of the Court of Directors (according to his Promise and Engagement) or in any other authentic Manner, to communicate the same to the said Court, or to take any Step whatsoever towards fulfilling the said Agreement, or providing for the said Compensation, until the Seventh Day of December, after an Order had been sent from this Committee, to call for the Proceedings of the Directors upon that Subject. Then, and not till then, a Resolution of the Court was entered, conformably to the Agreement made so early as the Month of June last.

4th. That Mr. Sulivan did make, or cause to be made, an Entry in the Minutes of the Court of Directors, containing a false Account of the Substance of a Conference between him and certain Members of this House.

5th. That it was Mr. Sulivan's Duty to send by an Express Messenger (if none were ready to depart on other Affairs) the Act of the last Session, concerning the Judicature of Bengal. This Act, among other Matters important in Nature and urgent in Point of Time, contained a Clause for releasing the above suffering Persons, who even at the passing of the Act, had endured a cruel Confinement of Two Years and upwards, in the Common Gaol of Calcutta—For a Description of which Persons, and which Gaol, Your Committee refer to the Patna Appendix to their Report of last Session, and to the Examination of Mr. Francis in this Report.

6th. That Mr. Sulivan has confessed to Your Committee, that he did not send the said Act by a special or any other Messenger over Land. He has also confessed, that a Messenger had, since the passing the Act, been sent over Land; and Your Committee has Reason to be persuaded, that more than one Messenger since that Time had been dispatched by the same Route. Mr. Sulivan, on his Examination, has declared that he did not think it was incumbent on him to send it by any other than a Sea Conveyance. The Ship used for this Conveyance, did not sail until the latter End of October, and having met with a Disaster at Sea, was obliged to return to Ireland, from which she had originally sailed; and at the Time of Mr. Sulivan's Examination in December, actually lay in the Harbour of Corke.

It further appears in Evidence, that if Acts of Parliament are not transmitted to the Governor General and Council by the Court of Directors in a General Letter, and mentioned and described in the Body of the Letter, they are not considered in Bengal as truly authenticated, and cannot be promulgated by the Governor General and Council.

Your Committee were of Opinion, that many and very great Mischiefs might happen, if the authentic Transmission of Acts of Parliament relative to India was unnecessarily delayed; and thereby a private Communication should, for any Length of Time, precede that which is regular and official; for by their being long known before they could be considered as in Force, Scope would be afforded to the Artifices of those whom they were intended to restrain, to elude, or very much to weaken their Operation.

Observing that Mr. Sulivan, on a Plea of his Duty to conceal political Secrets, was unwilling to give Your Committee full Information on a Matter, which they conceived not to be of a Nature that could require Secrecy, ordered the Attendance of Mr. Wilks, an Officer of the East India Company, now acting as Clerk to a Committee of the Court of Directors, called The Committee of Secrecy, consisting of the Chairman and Deputy Chairman.

The Evidence of Mr. Wilks afforded little Information or Satisfaction to Your Committee.

He

He (as far as they can collect any Thing very distinct from his Answers) has said, that Five Copies of each of the East India Acts of the last Session, had been transmitted by him at the Desire of the Chairman and Deputy (not by the Court of Directors) with a Paragraph in a Letter to the Governor General and Council, directing their Obedience to these Acts of Parliament; which Direction he inserted of Course, on being ordered to send the Acts of Parliament. It was collected from his Answers, that the Dispatch was dated the First of August, and finally dispatched the Third of that Month; that it was sent by Sea, and before the Dispatch sent by the Tryal Sloop. But he refused to inform Your Committee of the Name of the Ship, or the Time of her sailing, or Place from whence she sailed; and the Question being at length reduced to the mere Time of sailing, he refused even to inform Your Committee of this Particular. And being asked, Whether the Vessel sailed to the Tryal Sloop? he only answered, That he had no Knowledge of her having sailed to the Tryal. Nothing material appeared, but that it was a private Transmission only; and not such as is commonly reputed in India to be authentic and obligatory.

Your Committee should not have observed upon this Evidence, having derived little Information from it, but on Account of an important Fact which it brought to their Knowledge, and which they think themselves obliged to report without Delay to the House:

That an Oath had been administered to him, Mr. Wilks, on his entering in Office, by Sir George Wombwell, then Chairman, to the following Purport: "That he will not communicate, "discover, or make known to any Person whatsoever, directly or indirectly, any of the Proceedings "of that Committee." [The Committee of Secrecy.]

He conceived that he could only be dispensed with the Obligation of that Oath, by the Authority of the Chairman and Deputy Chairman who composed that Committee; and that he was specially by them restricted from communicating to this Committee, the Secrets of that Committee; and particularly the Circumstances of the Dispatch of the Third of August; but had Leave to mention the Date of the Dispatch, and the Time of dispatching it.

This Oath seemed not a little to embarrass Mr. Wilks, not only in this, but in every other Matter on which he was examined by Your Committee. It appeared the more extraordinary, because (though Your Committee did not mean to derogate from their undoubted Right of asking any Questions which they should think advisable) no Question whatsoever was asked relative to the Subject Matter of that or of any Dispatch; the Question related solely to the Transmission, Six Months ago, of Five printed Acts of Parliament: And he himself informed Your Committee, "That the sending "Acts of Parliament could not be considered as any Part of their Proceedings as a Committee of "Secrecy;" and "as such, that they had nothing to do with the Act of Parliament."

Your Committee observe, That they know of no legal Power by which that Oath was administered; and they conceive the total Subversion of all judicial Proceedings, and of all Parliamentary Enquiry, must ensue, if any Persons are permitted to tender and receive voluntary Oaths of Secrecy, which do not include an Exception to an Examination by a competent Authority. The Persons whose Conduct is the immediate Subject of Enquiry, may be (as in this Case they are) the only Persons who can dispense with the Oath. They may actually restrict (as here they have restricted) the only Evidence which is capable of giving satisfactory Testimony concerning their Proceedings. It would be to no Purpose to make Acts to regulate and controul Persons in Trust by the East India Company, if they were, by Oaths of Secrecy, permitted to disable the Witnesses which might prove their Breaches of the Law. If such Oaths are allowed to be valid, they must wholly disqualify this Committee from an effectual Observance of any Part of the Instructions received from the House.

Your Committee are therefore of Opinion, That the giving of such Oath by the Chairman of the Company without any Authority of Law to give it, was originally unwarrantable; and that the enforcing it, with Regard to the Enquiries of a Committee of this House, is a Misdemeanor.

Your Committee, before they conclude this Head of their Proceedings, think it necessary to report to the House, their Observations upon a Matter which incidentally came to their Knowledge, in the Course of their Enquiry into their First Object, and which they consider as of an extraordinary Nature, and well deserving the serious Attention of Parliament.

Upon a Plan of Reformation, adopted by Parliament in the Year 1773, Mr. Francis was, with others, constituted in the Statute which carried that Plan into Execution, a Member of the new Council General, formed for the Government of Bengal, and the Superintendance of the whole Administration of the British Affairs in India. Mr. Francis, in a Letter addressed to the Court of Directors, which is become Public, has, in distinct and unqualified Terms, charged that Court with little less than an entire Neglect of their Duty, in many of its most essential Parts; and in particular, with the constant Support of certain of their Servants in an open Disobedience of their Orders. To this Letter Your Committee refer in their Appendix, N<sup>o</sup> 8.

Mr. Francis, though he waited on the Chairman and the Deputy on his Arrival in London, and was by the Chairman visited, never was asked a Question of any Sort relative to the important Affairs in which he had been engaged, and which, when he departed from India, were left in a critical Situation ; nor did the Chairman ever summon him to appear before the Court of Directors, or call upon him in any Way, either to abandon or support his Accusation.

Your Committee are of Opinion, That the Authority of the Court of Directors cannot be maintained in the Respect necessary to give Poise and Controul to that immense System of Offices of all Descriptions, who act under them, if they are seen to pass over, in a Silence strongly expressive of Guilt, such weighty Charges against them, brought in so solemn a Manner, by a Person of so high a Rank in their Service. Your Committee conceive, That those Directors are ill qualified to confront the Boldness of Delinquents, strengthened perhaps by Wealth, Combination, and a common Cause of Abuse, who are themselves obliged to shrink from Enquiry, and who do not dare to look in the Face a Servant of their own, who indicates (at least by his Charges on them) that there is nothing in his Conduct, which calls for a mutual Traffic of Connivances. On the other Hand, Your Committee are of Opinion, that it is the greatest of all Discouragements to honest and disinterested Servants, who shall be disposed faithfully to obey the Orders of the Company, when they receive Commendation at the same Time that they are denied Support ; and that a Censure for Disobedience is followed with a Continuance, and even an Increase, of Trust, Favour, and Power. This Conduct in the Court of Directors, if it should, on further Examination, appear in the Manner in which at present it stands charged, and not answered, will lead irresistibly to a Presumption, that proper Directions are given only with a View to Acquittal on the Fore sight of a Criminal Charge ; but that in Reality, those who issue colourable Orders, are secretly in League with the Offenders, on whom they pass an unoperative Censure, which, instead of correcting Misdemeanors, become an Indemnity from the exemplary Punishment demanded by their repeated Acts of Disobedience.

The Experience of many Years, and the Fate of a great Multiplicity of Regulations, has proved, that no Alteration in the Constitution of the Court of Directors, (whether affecting the Duration of their Office, or the Rotation established in that Body) that no Change of Qualification in those who elect them ; that neither the Nomination of new Servants to superintend their Affairs in India, (although the Nomination was actually made in Parliament) nor the Establishment of a new Court of Supreme Judicature, (though that too was made by parliamentary Authority) nor the Appointment of the Judges (though by the Crown) nor all these, with all the other numerous Provisions in the Act of the Year 1773, and the subsequent Acts, taken together, can furnish an adequate Coercion, where the Temptations to Delinquency, in whatever Hands Power may be lodged, or from what Quarter soever it may be derived, are infinitely great, and the Danger attending it has never appeared in one single Example of Importance : On the contrary, it is to be apprehended, that the Regulations, standing, as they stand, thus naked and unarmed, have proved rather mischievous than beneficial ; and that the very Controis and Balances contrived in the Indian Administration, have increased the Discords, without reforming the Corruptions of Government. It is even to be feared, that whilst Regulation is unattended with Enquiry, the loading the Revenue with heavy Salaries, in the Hope of securing Independence to Office, has only served to secure a strong Ground, which enables the Officer to contend with Advantage for other Offices with other Salaries, and to give Rise to Controversies, which after being pursued through an intricate Maze of Dissention and Corruption, terminate at length in that very Dependence, which the original large and certain Emoluments were given to prevent.

Your Committee are of Opinion, that the Abuses which prevail in the British Government in India, do not arise from the Want of a sufficient Number and Variety of Employments, but from a long-continued Inattention to the Conduct of those who are either in the Possession of Places of high Trust, or in probationary Situations leading to such Places.

Your Committee having examined into the Conduct of the Chairman of the Company, with regard to the Objects of the East India Company's Petition, proceeded in the next Place, to consider the late Arrangement which has been made by the Governor General of Bengal, in Favour of Sir Elijah Impey, Chief Justice of the Supreme Court.

This Arrangement Your Committee find to be of so much Moment, and leading to Consequences which must so materially affect the Objects into which they have it in Charge to enquire, that it becomes their Duty to lay it open in the most full and most explicit Manner to the House, such as substantially it appears to them ; in order that the House, discovering the true Motives of the Parties, and the real Spirit of the Transaction, may be the better enabled to adopt such Modes and Measures of Coercion or Regulation, as the Importance of the Subject may require. Your Committee have, therefore, considered the Matter, and digested their Observations under the Six following Heads :

1st.—The Power given or implied by the Governor General to reside in the Office of Judge of the Sudder Dewanee Adaulut, lately conferred on Sir Elijah Impey.

2d.—The Circumstances under which the Appointment was made.

3d.—The Expedience and Policy of that Establishment, in that Person, and with those Powers.

4th—The Act of Parliament and other Powers under which the Appointment was justified.

5th.—The probable Effect, which that Appointment, under those Circumstances will have: 1st. On the Natives; 2d. On the Judges and other Officers of the Supreme Court; 3d. On the Members of the Council General not concerned in the Transaction; and, 4th. On the British Inhabitants at large, and the Professors of the Law in particular.

6th.—The Manner in which the Accounts of the several Parts of that Transaction have been transmitted to Europe, and the Effects of that Mode of Transmission.

### I.

Under the First Head, Your Committee enquired into the Powers and Authorities belonging to the Office which has been granted to Sir Elijah Impey. As they are not defined in the Minute of the Appointment and Acceptance, which was entered on the 18th of October 1780, Recourse was had to the Minutes on the original Proposition, made on the 29th of the preceding Month. Those Minutes convey (though by no Means with the Accuracy and Precision that ought to have been used upon so very important an Occasion) the Sense which the Mover, Mr. Hastings, entertained of the Powers he was giving, as well as the Light in which the Members of the Council who dissented, understood the Powers they were opposing. As the Notions of these dissenting Members on that Subject were never contradicted by Mr. Hastings or by Sir Elijah Impey, Your Committee were of Opinion, that from the joint Consideration of all the Papers which compose (what is called) the *Consultations* on that Business, something of the true Nature and Extent of the Authority might be tolerably collected. The Whole of these several Minutes must be considered as one Piece; else the Powers expressed in the Proposition on which the Institution is framed, and the Institution itself, might be essentially at Variance; a Matter extremely irregular, and which would give Rise to the worst of Practices; for when the enormous abstract Power of the Court is questioned, it would be defended on the Terms of the Minute of Appointment, which expresses little or nothing distinctly; but when in Practice that Power was to be exerted, Resort would be had to the avowed Intentions of the Legislature, to have it construed in a very extensive Sense.

In order to obtain, if possible, a more just and satisfactory Idea of the Office, Your Committee also perused the Plan of the original Court of Sudder Dewanee Adaulut, inserted in a Report of the Secret Committee which sat in the Year 1773. But Your Committee found, that the Definition there given in very clear and precise Words, to be so totally departed from by the Construction in the Minute of Mr. Hastings of the 29th of September 1780, that no specific Limits to the Authority of the Court can be clearly marked out by a Reference to any Part of that Plan.

The Definition which stood in the original Constitution of the Court of Sudder Dewanee Adaulut, namely, “*that it should be a Court of Appeals from the Provincial Courts,*” is expressly denied of this new Office; so far as the Definition confines the Jurisdiction to Appeals. By the Description substituted in Mr. Hastings’s Minute, it should seem, that the Jurisdiction may be appellate or original, as Sir Elijah Impey shall choose; that he may, at his Discretion, call up, and revise or alter, any Part of the Proceedings in the Courts below; that he may form such Rules for the Proceedings of those Courts as he thinks fit. No Rule of Law or Equity, or Usage, either of Great Britain or of any other Nation, is laid down in that Consultation, by which he shall judge, or by which he is to be governed, in the Rules which he shall prescribe to the several Courts below. No Species of civil Cause is clearly excluded from his Competence. No Class or Description of Men is distinctly exempted. The Judgment is final and conclusive; there is no Appeal, Revision, or Rehearing in any other Place. All this Power is vested in a single Man.

This Authority (so far as may be inferred from the Governor General’s Reasoning upon it) extends not to the Proceedings only, but to a Power of Alteration in the very *Constitution* of the subordinate Courts themselves. For he is declared in the Minute to have Power to remedy their *Defects*, and to form such new *Regulations and Checks* as Experience shall prove necessary to the Purposes of their Institution. And this, it should seem, is a Power which he not only may, but must exercise. For, if the Provincial Courts are, as the Framer of this Institution asserts, “*in Want of legal Powers, except such as are implied in very doubtful Constructions of the Act of Parliament,*” and that the Want of legal Power is to be supplied, and these Doubts to cease on Sir Elijah Impey’s Appointment, it can only be effected by his supplying these Courts with Powers of another Kind, and bestowing such as shall be agreeable to the real Authority given by the Act. The Minute either supposes an Authority in Sir Elijah Impey to new-model the Courts to the Act of Parliament; or, what would be worse, to confer upon them Powers, which the Act of Parliament had not given the Governor General a Power to confer.

After

After declaring or presuming, these Powers, or Powers tantamount to them, to be vested in the Chief Justice, a Power is also, by a subsequent Minute or Resolution, reserved to the Governor General and Council, on their Part, to make Orders, Rules, and Regulations, which the Judge is to obey. Here is a double Legislative Power; one delegated, the other held. But, as Regulations and Ordinances are, for the most Part, by their Nature, general and prospective, they give (even if the Council does possess any Power of making them) no Remedy in *particular Cases*; nor is there any Relief if they are not obeyed; except the dangerous Power of Removal at Pleasure of a Judicial Magistrate; which may be exercised on Account of the Judge's doing his Duty, as well as for his having violated these, or any other Regulations.

The Chief Justice accepts the Office in the following Words: "Under its present Regulations, *"and such others as the Board shall think proper to add to them, or to substitute in their Stead."* On these Terms it is impossible to know what Authority he may or may not exercise in that Office. He is Judge of the Supreme Court, whose Authority he had frequently declared to extend over Acts of the Council General collectively, as well as to the Conduct of the Members individually. He here submits himself to their Power of Regulation, without any Sort of Reserve whatsoever; though it is obvious, that their Regulations might possibly clash with or affect the Authority and Jurisdiction of the Supreme Court, which in another Capacity it was his Duty to maintain; and which he had represented it as the systematic Design of the Council to impair, if not to destroy.

When the Court of Sudder Dewanee Adaulut has received such a Latitude of Power in itself, when it *may* receive much larger, and may, meditately and immediately, give such Powers to the Provincial Courts; none but the Supreme Court (which now stands on a most precarious Footing) appears competent to question the Right of acting either in the one or in the other. But the Governor General asserts in his Minute, that these Provincial Courts, "when acting under the Sanction and immediate *"Patronage of the first Member of the Supreme Court"* [now become Judge of the Sudder Dewanee Adaulut] *"nobody will dare to dispute their Right of acting;"* and, by much stronger Reason it must appear, that none will dare to dispute the Right of acting of the Person under whose Protection the inferior Courts are to enjoy so formidable an Immunity. All legal Power of Controul in the Supreme Court being rendered precarious at best, and so rendered by the Effects of the Patronage of the Chief Judge of the Supreme Court itself; the sole Corrective to the Power given, with Regard to particular Suits, must reside in the personal Qualities of Sir Elijah Impey, who is the principal Judge in one Court, and sole Judge in the other. What those personal Qualities are, it may be difficult, in the Midst of a warm Contest, exactly to discern. But there is no Difficulty at all in pronouncing on Mr. Hastings's Opinion of them. He certainly conceived, that Sir Elijah Impey's Conduct throughout the late Proceedings of the Supreme Court, was violent and indiscreet; and that towards the Natives, as well as towards several British Subjects, it was harsh and oppressive. Upon no other Grounds did he, or could he stand clear of the same Imputations on himself, in his strong Acts of Power in India, and his strong Remonstrances sent to Great Britain. Yet has he chosen to put the Person whose Conduct he thought thus rash, even when limited by Laws and Charters, into an Office of such unlimited arbitrary Power, as nothing but the greatest Temper, Moderation, Equity, and Regard to the Natives, could render in any Degree tolerable. If the Appointment therefore of such an Office could be justified by Law, or any avowable Expediency, Mr. Hastings is clearly reprehensible for filling it with a Person of whom he had entertained, or pretended to entertain, an Opinion, which (if well grounded) must render him altogether unfit for that Situation. He has put into a Situation of great Power and Trust in the Company's Service, the Chief Judge of a Court; the constant Aim of which he had represented to be that of Encroachment (if not worse) on the Rights and Privileges of that Company; of whose Rights and Privileges he (Mr. Hastings) was the natural Guardian and Trustee.

## II.

The Circumstances in which this Arrangement was made, have next attracted the Attention of Your Committee.

The Governor General had published Orders, authorizing a Disobedience to the Process of the Supreme Court; and supported these Orders by a Military Force. The Chief Justice persevering in his Claims, issued Process for seizing the Officers, who acted under the Directions of the Governor General, even in the Camp; and Attempts were more than once made to put this Process in Execution.

In this Situation, the Governor General applies to Parliament for his Indemnity, on Account of a Proceeding, in itself so highly criminal, and so extremely dangerous in the Example; justifying himself (as it might naturally be expected) on the absolute Necessity of the Case; owing to the violent Spirit of the Court, their systematic Scheme for extending Jurisdiction, and the dreadful Consequences which might arise from the Discontent and Desperation of the Natives, irritated beyond Patience by the intemperate Proceedings, in which the Chief Justice had taken so active a Part. In Support of that Assertion, together with many other Matters of Charge, he transmits Petitions of the Natives, heavily complaining of the Conduct of the Supreme Court.

The Chief Justice, in his Letter to the Secretary of State, on his Part complains of the violent Proceedings of the Governor General and Council; whom he charges likewise with a systematic and regular Design of overturning the Authority of the King's Commission; asserting that the Charges against himself and the Court, were unfounded, so far as those Charges had come to his Knowledge. He states the Petition of the Natives, as not their true Sense, but as a Representation obtained from them in the Manner in which Petitions for factious Purposes are obtained in England, but with this Difference, "that the Petition against the Court, [the Supreme Court] was obtained under the Influence of Terror."

He represents, in a Letter to Lord Weymouth, 26th March 1779, "that Complaints without being examined, found an easy Admittance on the Consultations of the Governor General and Council; they hoped they would form a Body of Accusation, which would be taken for Proof, and would at once overwhelm the Court. From the Establishment to the present Period, it has been attacked by Charges kept *profoundly secret* from the Judges." In his Letter of the 20th of March 1780. He states, "That from the universal Tenor of the Conduct of Government, from the Anxiety with which Complaints against the Court are collected, and the Secrecy with which they are sent to England; from no Appeal having been made on any Question of Jurisdiction, and no public Prosecution carried on against the Ministers of Justice, it appears to me to have been a concerted Plan, to enter every Representation to the Prejudice of the Court or its Officers, silently and *ex parte* on their Records, and not to let the Facts which they contain, be brought to a Public Discussion, either here or at Home; by which they hope that to prevail *unexamined*, by its Weight, as an heavy Body of Accusation, which might be liable, on Examination, to be refuted and falsified."

This Want of Communication of Charges had been frequently urged against any, even against a merely remedial, Proceeding in Parliament, by which the Character of the Chief Justice might be remotely and by Inference affected.

Although the Want of Communication did not appear to Your Committee a sufficient Reason against providing a Remedy by Regulation, for a proved Grievance, it always did appear to them highly blameable in the Governor General and Council, not to have made a regular Communication of their Complaints to the Judges; which in this last Instance we do not find to have been done. The British Inhabitants pleaded Fear of the Resentment of the Court, and as it should seem, not wholly without Reason. But there was no Reason for such Apprehension on the Part of the Governor General and the Board, armed as they were with all the Powers of the State, and disposed to use these Powers in their fullest Extent.

Under these so heavy reciprocal Accusations, the Parties were in the last Session brought before a Committee of this House. On the Revival of the Enquiry in the present Session, the Conduct of the Persons making these Accusations, became an early Object of Attention to Your Committee. Mr. Shakespeare, Chief of Dacca, was examined. His Evidence implies, that the Governor General and Chief Justice had for some Time forbore their mutual Visits, but about the Time of the Arrangement for the Court of Sudder Adaulut, they were reconciled.—Major Scott, private Secretary, Aid du Camp, and Agent to Mr. Hastings, was also examined. He is more full and direct, as he is by his Situation better qualified to speak to the Habits of the Parties. He informs Your Committee, that during the whole Time of so violent a Contest, and when Accusations of the most atrocious Kind were made against the Chief Justice, without Communication, he and his Accuser lived in an unbroken Intercourse, and on Terms of Intimacy and Friendship.

The Conduct of the Governor General and Council, in collecting, countenancing and transmitting Charges against the Court, which appears so blameable to impartial Judges in England, was considered (as might be expected) in the very worst Light by the Chief Justice. For so early as August 1775, speaking of himself and his Brethren, he says, "We cannot but consider any *Secret Animadversions* on our Conduct, as an indirect, and consequently an illegal Interference with our Authority, tending to weaken the *Independency*, without which it is *impossible* to administer impartial Justice." His Opinion of the Necessity of his *Independence* towards his performing the Duties of his Office, is certainly just; and his Concern for whatever might seem even *indirectly* to tend to weaken it, is, without Doubt, highly commendable. His Indignation against all Secret Accusations, is natural and becoming; he appears a Man of the quickest Sensibility to sinister Imputations, though not such as he thinks will affect him before any competent Authority; for in his Letter of 20th January 1776, "He calls on the *Humanity* of the Secretary of State to excuse him, labouring as he is, under the most agonizing Apprehensions that *some Part* of the foul Imputation on his Character will gain Credit among the *Multitude*," whom he states to be too apt to give ear to Calumny. Under the fresh Sorenness of such Feelings, and under such heavy Charges, not made to the Multitude, but to Parliament, he takes an Office of Profit under the Authority, and tenable at the Pleasure of the very Board, composed of the very identical Persons who had transmitted against him Accusations, (which if innocent, he must suppose to be ill-grounded) and which by not being communicated, he must consider as un-

fair, if not treacherous, and deserving of all the Epithets to which he had formerly given to "Secret Animadversion."

It is remarkable, that whether he always continued in Friendship with Mr. Hastings, as Major Scott affirms, or was reconciled after a Coolness, as Mr. Shakespeare supposes, that neither in the continued or on the renewed Friendship, any Stipulation with the Governor General appears to have been made by the Chief Justice, for furnishing him or his Brethren with the Materials for a Defence to oppose to the uncommunicated Charges laid before Parliament against them, and against himself; nor did Your Committee find that any further Complaint of want of Communication has been made against the Governor General and Council, nor any full Elucidation of the Matters in Dispute been sent, though Opportunities have occurred.

Another Circumstance is remarkable in this Transaction, and may lead to a Discovery of the Sense which the Parties themselves entertained of it. In the Year 1772, the present Governor General, with the then Council, had formed a System of Provincial Courts; in which, as has been already observed, the Court of Sudder Adaulut is the Chief. What Opinion the Governor General entertained of the Legality of this Institution, will appear from his own Minute, with regard to their "very Right of acting." He affirms, that "their Powers are only implied;" and that Implication only "on a Construction of an Act of Parliament;" and that Construction "doubtful," and not only doubtful, but doubtful in the Extreme, "very doubtful," which is substantially the same Thing, as in his Opinion having little or no legal Authority.

If this was his Opinion of the lower, it must also, and for much stronger Reason, be his Opinion of the higher Parts of the same System—for it would be absurd to suppose a lawful Court of Appeal from Courts, which in themselves are fundamentally illegal.

This being the Governor General's Idea of the constructive and doubtful Nature of the original Institution, the giving it, by a further Construction, a far larger Degree of Authority, must have appeared an Assumption of Power (if possible) still more doubtful; and in that Case, it behoved the Governor General not to have made such Dispositions, until both the first and last Doubts were removed by an Authority that could not be dubious.

But Your Committee find, That no public Means of any Sort, either on the Part of Mr. Hastings, or on the Part of the Chief Justice, were taken to remove those Doubts, supposing the Measure of such Urgency as to require its Accomplishment before Recourse could be had to Great Britain, which Your Committee conceive it was not. In a Business of this Moment, which, if any Thing could be so, was, by Eminence, a Matter of Law, for the first Time, no Law Opinions were taken on either Side. During the preceding Contests with the Supreme Court, the Council Board had been all along aided by the Opinion of the Advocate General, though the Members were then entirely unanimous. On several former Occasions, they had even applied to the Advice of the Judges of the Supreme Court, though the Matters were not more interesting, nor more involved in legal Difficulties.

The Chief Justice, on his Part, had been in the Practice of availing himself of the Assistance of his Brethren of the Bench. Here, for the first Time, the Communication between them was cut off. No Application was made by the Chief Justice to his Associates in the King's Commission.

This Law Arrangement, thus made without any Law Reference, is the more striking, as, instead of the former Unanimity, the greatest and strongest Difference of Opinion had prevailed on this Point. It appears, that the Council were equally divided in Number, and the Question was carried only by the Governor General's casting Vote. In this Dissent, no Application was made to the old Law Resort, though the Governor General had, a very little Time before, concurred in, if not been the Proposer of, a Grant of a Salary of Three thousand Pounds a Year, in Addition to the former Salary, which was of the same Amount, to the Advocate General for his Assistance in Matters of Law.

The Governor General, independently of his legal Difficulty, had no Doubt that this Measure would subject him to much Obloquy. The Chief Justice must be presumed to know that he should necessarily be involved in the same Censures. It also appears in Evidence, that the Arrangement was, in Fact, odious to the British Inhabitants in general; and the Witnesses are of Opinion, that it must have proved displeasing to the Junior Judges of the Supreme Court.

No Way appears of accounting for this unprecedented Omission on both Sides, but this; that the Parties were well convinced that their Doubts of the Legality of the Appointment (which they had determined to carry into Execution, notwithstanding the official Opposition and the Public Odium) were more likely to be confirmed than removed by any Reference they could make.

## III.

The Grounds of Expediency on which this Court has been justified, are stated at large by Mr. Hastings, in the Papers called "Consultations of the 29th of September 1780," which are answered in other Papers by Mr. Wheler and Mr. Francis. Your Committee refer to these Papers in their Appendix, N° 4. observing, that the Objections made to this Appointment appear solid; and that they have received no Answer in any Minute of Mr. Hastings, nor in any Writing produced to this Committee; nor has Mr. Scott, Agent to the Governor General, verbally given any Solution to their Difficulties. Mr. Hastings is said, by himself and by Major Scott, to depend upon his good Intentions, and the Benefits to arise to the Company; which is an unsatisfactory and improper Mode of Defence, when Objections to the Conduct of a Person in Authority are Specific.

In Addition to these unanswered Objections, Your Committee observe, that the Two principal Causes assigned for the Arrangement by Mr. Hastings, through his Minute and his Agent, are, First, The Harmony which is to prevail between the executive and judicial Powers; and Second, The preventing of Suits before the Supreme Court against the Company, or against those, whom it may be thought fit to support at the Company's Expence.

To accomplish a contingent Saving, a certain Expence is incurred of Eight thousand Pounds a Year, besides the Expences of the Establishment, which are in all Probability very large. The additional Salary voted to the Company's Advocate General, in Consideration of his Advice and Assistance in Suits (Suits in this Arrangement supposed to be prevented in future) amount to Three thousand Pounds annually. And Experience has abundantly shewn, that the Charges of Indian Establishments have never been permitted to remain long on the Expence limited by their original Institution. It is not stated what Fees of Office are or are not permitted to be taken, either by the Judge, or any inferior Officer, or by Practitioners in the Court. Such Fees are virtual Charges on the Revenue; and this Point ought to have been clearly settled before the Salaries were appointed. The Propriety of the Quantum allotted to each Office, must depend on the other Emoluments which each Officer is allowed to possess.

Neither is it at all clearly stated in what Manner *any* Saving can accrue, as the Supreme Court retains all its Claims; and a new Court is added, in which it does not appear, that Suits may not be commenced wherein the Company may be as much obliged to defend their Officers, as in any which have been commenced, or may be commenced hereafter, in the Supreme Court.

With regard to the Second Ground of Expediency, namely, The Harmony between the Civil Administration and the Supreme Judicature, it is to be observed, that towards reconciling the Differences between them, neither of the Parties seem to have abandoned any Part of their Claims. Mr. Hastings had contended, that if the Claims of the Supreme Court should prevail, the Government of the Country would be embarrassed, the Revenue destroyed, and the Natives oppressed. On the other Hand, the Chief Justice maintained the Rights claimed by that Court, as of absolute and indispensable Necessity towards obtaining its End in the Protection of the Natives. The Idea of establishing Peace, upon the Ground of adverse Claims thus fundamentally differing upon Principle, and which nothing even appear to reconcile but the lucrative Office given to the Chief Justice, can be maintained but upon Suppositions highly dishonourable to the Public Justice, and to the executive Administration of Bengal.

It is indeed observable, that the whole Scheme of Reasoning, by Mr. Hastings, proceeds upon a Supposition, that in Substance and Effect the Chief Justice was the whole Court. As Mr. Hastings well knows the State of the Country, and of that Court of Justice, the Ground of the Reasoning cannot be wholly slighted, as it determines much concerning the Effect of the new Appointment on the Welfare of the Native Inhabitants, as well as on the Utility of the Judicature established under the Royal Charter.

The State of Bengal under the Two Courts, namely, the Supreme Court, and the Court of Sudder Adaulut, constituted and filled as they now are, is conceived to be this: In the Court of Sudder Adaulut, the Natives, and a great Part of the Company's Servants, are subjected to the Discretion of Sir Elijah Impey. No Place is left in which to question the Extent or the Exercise of his Power in the Sudder Adaulut, but the Supreme Court. But in the Supreme Court, the Complainant finds the Person against whom he complains, sitting as the presiding Judge. One and the same Man in his own Person possesses, and in Effect blocks up, all the Avenues to Justice.

Against the Subject, and against the inferior Magistrate, this two-fold Authority is boundless and formidable; against the Persons, most capable from their Situation of causing and countenancing Abuse, it is feeble and precarious at the best; and in Truth, more likely to become the Instrument than the Control of their Designs. By the Dependency of one Tribunal, both are rendered dependent; both are vitiated; so far as a Place of great Power, Influence, and Patronage, with near

near Eight thousand Pounds a Year of Emoluments, held at the Pleasure of the Giver, can be supposed to operate on Gratitude, Interest, and Fear. The Power of the Governor General over the whole royal and municipal Justice in Bengal, Bahar, and Orissa, is as absolute and uncontrollable, as both those Branches of Justice are over the whole Kingdom of Bengal.

In that Situation the Governor General is enabled to do Things under the Name and Appearance of a legal Court, which he would not presume to do in his own Person. The refractory to his Will may appear as Victims to the Law; and favoured Delinquency may not appear as protected by the Hand of Power, but cleared by the Decision of a competent Judge. Other Establishments have had fair and plausible Beginnings, and have afterwards degenerated. But this sets out abusively in its fundamental Principle. And from what has already appeared to Your Committee, this Arrangement may be only preliminary to great and critical Changes; undertaken, if not by this Time executed, on the whole Establishment of Bengal; to the Effect of which Design, the Acquiescence or Impotence of the Supreme Court, and the Subservience of the new Institution, may be essential.

#### IV.

The Fourth General Head under which this Arrangement has been examined by Your Committee, is the legal Authority upon which it is supposed to be made.

Your Committee are of Opinion, that no one Object requires the vigilant Attention of Parliament, more than the Power exercised of making new Courts of Justice in India. The Power by which new Courts of Law are made, is of the highest Form of Authority, and in its Nature, Legislative. But if these Courts are without Jury, where the Law and the Fact are in the same Hand; if they are without Appeal, where there is no Resort against Precipitancy, Error, or Corruption; if they are in a single Person, where they are without Check or Assistance from co-ordinate Rank, or equal Understanding; if they are not limited in the Quantity of Property to which they shall be competent, but may decide in the greatest Interests; the more dangerous it is to put the Power of conferring such Authority into subordinate Hands. These Considerations, which apply with Weight in all Cases, apply with far greater to Courts of Justice in a Country so distant as India; and where Religion and Manners double the Distance. But so long as the Exercise of this Power is permitted in the present Hands, the greatest Care ought to be used, that the Authority under which new Courts are established, be clearly known, and clearly legal; and that the Powers given to them, be as definite as possible.

Mr. Hastings has not stated upon what Clause of the Act (supposed the Act of 1773) he made the very doubtful Construction, by which he implied his Power of creating a System of Courts of Judicature, of which the Sudder Adaulut is Part. If the Authority under that Clause (whenever that Clause is certainly known) shall be found infirm, the whole Superstructure fails. But upon whatever Principle of Legality the Court stood in its first Institution, it is by no Means clear, that in the present Case these Principles are at all applicable. Its Powers are different; the Number of Judges is different; the Description from which the Judge is taken is different.

It would be highly absurd in Reasoning, and highly dangerous in Practice, to admit, That because a Court was continued under the same Appellation, though a total Change in its System had taken place, it might still be justified upon the Legality of its first Appointment. If this Principle could be supported, the admitting a subordinate Legislature (for such the Governor and Council is, if it be any Legislature at all) to make any one valid Regulation, would involve in it the Means of turning that One into any Regulation whatsoever; by which Means the Controul of the superintending Power, necessary to restrain the Makers of Bye Laws within due Bounds, would be rendered totally nugatory.

That the Court of Sudder Adaulut is different from the former Court of the same Name, and therefore for so much a *new* Court, is evident from Mr. Hastings's Description of it in his Minute.

1st. Because the original Court ought to have been a Court of Appeals. By this it must be understood to be a Court of Appeals *only*. For no *new* Court can have any Jurisdiction, but what it derives from the Words in its Constitution conveying Jurisdiction. But no Words, giving any other or further Powers than those of Appeals, are found in the original Appointment; and therefore no such Powers as those contained in the Minute by Mr. Hastings, can be valid under that Constitution.

An Attempt to introduce a *new* Court, under the Pretence of filling up a judicial Office in an old one, is an Action highly reprehensible; even supposing the Power of making a new Court to be clearly competent to the Parties claiming it. Yet this oblique Manner of exercising their Powers, is extremely faulty, as it tends to conceal from the superintending Authority the true Nature and Extent of their Act, and as it prevents their considering it with that Attention with which an Institution with *new Powers* is examined, when they are stated as *new*, and are not supposed to be involved in

[ 41 ]

in the Construction of such as have been long allowed. Had the Act been proper, the Manner of doing it is calculated to deceive.

2d. The Difference between the Number of Judges in the old and new Court, is material. The Old might have consisted (if the Members should choose to attend) of the whole Council, who amount to Five; at the Time of the original Institution it might have consisted of Twelve; it could not have acted with fewer than Three of that Council. This Court is in a *single* Person.

3d. But if that Court were not otherwise new, the total Alteration of the political Character and corporate Description of the Judge, changes its Constitution. The original Court of Sudder Adaulut had for its Judges, the Governor General and Council, in their *public and corporate Capacity*; they are Servants of the *Company*. The present Constitution supersedes *that* corporate Body, and substitutes Sir Elijah Impey, Chief Justice of the Supreme Court, who is a Servant of the *Crown*. In all these respects (setting aside the Consideration of the Salary, which is new, and the attendant Establishment, which are reserved for another Place) the Court of Sudder Adaulut appears to Your Committee to be, in Effect and substantially, a New Court.

Your Committee does not deem it expedient, at the present Time, to report any decided Opinion on the absolute Legality or Illegality of the original Institution of that System of Courts of which the Court of Sudder Adaulut makes a Part. They conceive, that the Authorities under which, and the Capacities in which, British Subjects have exercised Authority in India, have been various at different Times, and not very easily reconcileable with each other at any Time; and that their legal Powers have in no Case been accurately defined; and that their Proceedings have not been inspected and controlled with a proper Degree of Vigilance by any Superintendency in this Kingdom. Therefore, for the Sake of condemning an Arrangement, (which they conceive, for the above Reasons, to be *new*, and which, on Grounds of Laws lately passed, as well as upon the clearest prudential and political Grounds, there may be found more than sufficient Cause to annul) it might perhaps be in some Degree dangerous to make a Declaration, which, by necessary Inference, might tend to shake the Validity of those Foundations, on which the whole Administration of the Country actually rests, until Parliament has collected sufficient Materials for making clear and definitive Provisions upon that delicate Subject.

But your Committee finding that the regulating Act of the 13th of His present Majesty, Ch. 63. seems to be resorted to by the Governor General, as furnishing the Authority on which the System of Courts in 1772 (of which the Court of Sudder Adaulut is a Member) have been created; they have perused that Act, and attentively compared it with the late Proceedings of the Governor General and Council. It is not indeed perfectly clear to what Act he refers. But it is presumed to be this. The Regulation establishing the Provincial Courts, was made previous to the passing of the Act of 1773, and he must (if he refers to this Act in Justification of that Establishment) suppose it in some Way, rather to be *ratified* by the Statute, than *made* under its Authority. Without examining therefore, under what other legal Authority the Establishment is or may be supported, Your Committee think it proper thus early in the Session, to lay before the House, their Observations on the Powers given, or supposed to be given, by the Statute of the 13th of the King, Ch. 63. that the House may be enabled to discover whether the Powers given thereby, have been exercised according to the Directions by which they are accompanied; and by a Review of the Powers themselves, may be the better enabled to judge what Alteration, Explanation or Amendment, may be thought necessary to the Act itself.

In this Act, Your Committee find Two principal Clauses, giving Power to the Governor General and Council, namely, the 36th and the 7th Sections. Under these Two alone (as Your Committee apprehend) any Foundation for a legislative Authority can be found in that Act.

Your Committee find, that in the 36th, there are Words conveying subordinate local legislative Powers, to make Bye Laws, with certain Restrictions and Limitations, *viz.* "to make and issue Rules, " *Ordinances*, and *Regulations*, for the good Order and Civil Government of the Company's Settlements at Fort William, and other *Factories and Places* subordinate, or to be subordinate thereto; " provided they are just and reasonable, and are not repugnant to the Laws of England."

These are nearly the Terms and the Restrictions with which the Power of making Bye Laws, is granted to Bodies Politic. As to the Extent of this legislative Competence; if this Part of the Act is supposed to be as general as the Words, " *Places subordinate or to be subordinate*," would imply, it seems to be a Power sufficient for the Purpose, as it extends to make Ordinances to bind the whole Kingdoms of Bengal, Bahar, and Orissa; it therefore may extend to the Power of making even a new Court. Whether the new Court of Sudder Adaulut is made upon a Construction of this Section, is unknown, as the Governor General's Minutes refer to no Part of the Act specifically, nor indeed in a very distinct Manner to the particular Act.

Your Committee are given to understand, that this Power in this Section has been held in the Su-  
S. COM. REP. I. L. preme

preme Court, and is commonly supposed in India, only to relate to certain minute Regulations of the Police, with regard to Calcutta and some other Factories. If this should be considered as the Sense of Parliament in making the Clause, or if it should be thought advisable in future, to confine this Power within these Bounds, it is conceived that it will be necessary to employ much more determinate Words for that Purpose, as the Words of the Act, as they now stand, seem to convey a much larger Authority. Because, if by the Words *subordinate Factories*, those small Pieces of Ground inclosed by slight Fortifications, which were formerly held under very scanty Grants of the Indian Princes, be understood, few of them are at all existing in this ancient State; and the Application of Ordinances and Regulations for the good Order of Civil Government of those Places, several of which are little more than private Dwellings or Warehouses, would be unworthy of the Gravity of a Law, or of a judicial Construction. If *Factories* be taken in a larger Sense, and extend to all the Places in which the Company has *Factors*, that is, Agents to buy and sell, it comprehends several great Cities, and their adjacent Districts; and indeed, in one Way or other, almost, if not altogether, the whole Kingdoms of Bengal, Bahar, and Orissa, excepting in what relates to Calcutta. The Competence given in the Words, "Forts, Factories, and Places subordinate, or to be subordinate to," either means this, or it means nothing.

This Sense gives a large Scope to the Legislative Competence of the Council; but it is utterly inconsistent with the Opinion that prevails, of its being confined to the Enclosure of what was formerly called a *Factory*.

It is not impossible, in the unformed State in which the British Authority stood in Bengal at the Time when this Act was under Consideration, and during the Disputes with the Company which then subsisted, that Parliament, on one Hand, was unwilling to leave the Council wholly without regulating Powers; and on the other, chose to use the old Language of Acts of Parliament, concerning the Possessions of the Company, which were generally in Acts and Charters described by the Names of *Forts and Factories*, before the Acquisition of such large territorial Possessions as have been lately acquired. Parliament was probably desirous to avoid any Thing which might lead to an Acknowledgment of a full Right in the Company to those Possessions at large. They were also not disposed to make any clear Declaration of what might amount, on the Part either of the Crown or of the Company, to a direct and avowed Superseding of the ancient Country Powers and Authorities. This doubtful State of Things produced an Ambiguity, visible in other Instances as well as in this; and which, in this Instance, it will be certainly advisable to remove, by Provisions more explicit in a new Statute.

If the Formation of the Court of Sudder Adaulut for Sir Elijah Impey, was made in virtue of any Authority derived from this Section of the Act of 1773, Your Committee observe, that the Directions of that Act necessary to give Validity to the Ordinances of the Council, have been observed in no one Particular.

The Act provides, First, That the Ordinance, Regulation, &c. shall not be valid, until it is "duly registered and published in the Supreme Court, and with the *Consent and Approbation* of the same." Secondly, That such Ordinance, Regulation, &c. "shall be openly published, and a Copy of it affixed in some open and conspicuous Part of the Court, where the Supreme Court is held." Thirdly, The Act provides an Appeal from the Regulations, &c. to His Majesty in Council, "within Sixty Days from Publication, for any Person or Persons in India; or for any Person or Persons in England, within Sixty Days from publishing them in England."

These Directions were not observed in the Appointment of this Court. First, The Ordinance ought to have been a formal Act or Instrument, such as might be published and registered. The present Arrangement was nothing more than a Minute of Council, (if regularly it was even that) never published in the Supreme Court, nor registered, nor consented to, or approved thereby; and consequently (so far as it is grounded on this Clause) is without Question invalid and illegal.—Secondly, Every Person in India and in England, has, under the Statute, an *Interest* in every new Regulation, and has a Remedy provided for him. This Omission of Publication would wholly take away the Benefit of Appeal from all British Subjects, to whom the Act has expressly given it.—Thirdly, By the Act, these Ordinances are to be transmitted to a Secretary of State, and if not abrogated within Two Years from the *making*, &c. shall be valid. The Clause is express for the *Time* which gives *Validity*; but not for the Transmission. This may seem a Defect in the Act; but, undoubtedly, the Sense of the Statute is, that every Ordinance should be transmitted as *speedily as possible*. When a Time is not limited in a Law, a Time *convenient* must be understood. Fifteen Months are past, since the Proposition of this Court in Council, and upwards of Fourteen from the Acceptance of the Chief Justice. Many Messengers are arrived, and no Copy of the Ordinance (if any Ordinance at all was made) is transmitted. The Two Years may expire before His Majesty has the Notice of it, which the Act directs; and the Prerogative of the Crown, given by this Act to His Majesty, may be thus defeated.

The other enabling Part of the Act of the 13th of the King, is contained in the 7th Section. In this Section, if the *Letter* is attended to, the Powers are large indeed. It is however, observable, that

that no one Term, appropriated in Charters or Acts of Parliament for enabling a Body Corporate to make Laws and Regulations, is found in that Section. Words proper for conveying the largest Powers of *Administration* are used; not one for *Legislation*.

The Clause begins with the Words "For the better *Management, &c.*" Then the following Words are used "The whole *civil and military Government* of the said Presidency, and also the "*Ordering, Management, and Government* of all the Territorial Revenues and Acquisitions in the *Kingdoms of Bengal, Bahar, and Orissa.*" These Words are all Words of *Administration*.

The Direction and Qualification of these Powers is as follows; "in *like Manner to all Intents and Purposes* whatsoever, as the same now *are* or at *any Time* heretofore *might have been* exercised by the President and Council, or Select Committee, in those Kingdoms."

Your Committee conceive, that no Power can be rendered legal by Reference to mere Actions, without any moral Qualification, and much less to the mere *Possibilities* of Action in any Person. To the Words "*now are* exercised, or *might have* exercised," Construction must, without Doubt, supply the *Words lawfully* otherwise every conceivable Abuse might be not only ratified for the Time past, but authorized in future, by an Act of Parliament conferring, in Effect, on the Governor General and Council, a Power of doing what they thought fit.

Two Reasons have been suggested for supposing this Power here authorized, to be unbounded, and therefore of course, to comprehend a legislative Capacity. First, It has been suggested, that the Company has succeeded to the Authority of the *Subadar* of that Province, who was a Prince exercising arbitrary Powers, unlimited by any Law; and that whatever he *had* done, or *might have* done, that became the Rule of what the President and Council might do.—In the Apprehension of Your Committee, such a Rule, is to have no Rule; nor can it be supposed that Parliament did, or could intend to appoint the actual Conduct, much less the possible Exercise of Power, by a Mahomedan, arbitrary Usurper (as the Subadar certainly was, if he affected to be an independent Sovereign) as a Standard of Legality for the Actions of British Subjects. If such Powers do or can lawfully exist, they may in Time be used for the Purposes to which they were formerly applied by some of the Subadars of Bengal, Independence and Oppression. It therefore becomes the more necessary, that Parliament should suffer no Doubt to remain upon the true Extent of the Powers which are supposed to be given by Words so loose and indefinite, as what Power has or might have been "exercised."

Your Committee conceive, that it is a great Error to imagine, that the People of those Countries lived without any fixed Law before the British Establishment. The Mahomedans were subject to the Mahomedan Law, as it is found in the Book called Alcoran, and its authorized Interpreters; and all Persons, from the lowest Slave to the most powerful Prince, was bound by it. Their Judges and Magistrates were also bound to observe, and to judge by, the *Reje ul Mulk*, or ancient Custom and Usages, or Common Law of the Country, where it was not absolutely repugnant to the former. Certain Persons called *Canongus*, were appointed for the Ascertainment of that Usage; and to preserve their Integrity and Independence, they held their Office for Life, by Patent immediately from the Superior Authority, and not from the Governors of the Province. A Breach of those Laws would have formed a just Subject of Complaint and Punishment against any Mahomedan Governor. The Exorbitance of Power in Bengal, arose from the Want of Means of coercing the Mahomedan Governors, by Institutions of Strength on the Part of the Subject, and from their Independence of the Supreme Power, never asserted as of Right, but for a long Time in fact existing. Acts of any Governor beyond the Laws, or contrary to them, were abusive; and Acts of Abuse can never be made the Standard of Legality.

That a Body of Law existed for the Gentū Inhabitants, is certain; and Mr. Hastings has the Merit of bringing that to the View of the Public, by causing very material Abstracts from it to be translated. The Gentūs have also their Professors in that Science, who, as it appears in Evidence to Your Committee, are Persons highly revered by the Natives, on Account of their Learning and Integrity of Life.

The Second Reason for supposing the Act meant to ratify arbitrary Power in general Words, is, That the British Power in Bengal had arisen from Conquest; and that absolute Conquest putting an End to all Laws, Rights, and Privileges, the Governor General and Council exercised a Power, from the Nature of the Case unlimited; and this is the Power alluded to in the above Suggestion, as ratified by the Act.

Your Committee find the Question of the Rights derived from Conquest in the Abstract, dark and arduous. But they are unwilling to believe, that Parliament ever intended to act upon a Supposition of the utter Extinction of all the original Laws and Rights of the Natives. If any such Conquest, attended with such Consequences, has happened, it is not to be presumed, that on a Supposition that so formidable Power did thereby vest in the Company, it would have been transferred by Parliament, without Bounds, to the Company's Servants.—If it vested in the Public, it

is not to be supposed that Parliament should part with the high Sovereign Members of such a Power out of their own Hands.

But your Committee observe, that formally and in Style, the Company do not act as a Sovereign deriving a Title from absolute and unconditional Conquest, whatever Right such a Title may be supposed to confer. They have accepted by Treaty, from the ancient sovereign Power of that Country, a Patent, under which they act as Duan, or Administrator of Civil Justice and of the Revenues. By accepting that Office, they accepted the Duties inseparable from it; which were undoubtedly to protect the People committed to their Charge, in all their Possessions, moveable and immoveable, and in all their Rights, religious and civil. The Acceptance of this Instrument was virtually a Convention entered into in Favour of the Natives, then delivered over to the Government of British Subjects; who, as such, are bound to be obedient to Acts of Parliament, wherever the Power of this Kingdom prevails, as Parliament will consider itself as bound to observe the Conventions under which Rights are acquired to the Nation, or any Part of it. As this Office of Duan, was not only accepted but solicited, and solicited and accepted at the Head of victorious Armies, it became much the more binding; because no Pretence could be made on the Part of the British Agents, that it was not an Act altogether voluntary. As therefore the Office of Duan did not confer any boundless arbitrary Powers, when held under the ancient Sovereign, neither can it, when held under the Controul of another Sovereign; and it can never be a fair or safe Construction of an Act of Parliament, to suppose that *any general Words*, conveying a Right to exercise Authority, were intended to convey a Power repugnant to the Compact implied in the Instrument under which alone the Means of exercising any Authority at all have been acquired; a Compact by which many Millions of People have come under the Protection of this Kingdom.

The indirect Authority which may arise from Influence over the native Magistrates in high Place, as it never can be estimated by any legal Standard, so it never could be the Object of the Act; so that the President and Council never did, and the Governor General and Council never can, exercise as of Right, those unlimited, executive, judicial, and legislative Powers, which have been contended for under the Act of 1773.

It would be the more mischievous to admit this infinite Authority under the 7th Section of the Act of the 13th of the King, because the Provisions necessary to prevent Abuse of Powers given in the 30th Section of the same Act, do not at all apply to the Powers given in this Part. There is the greater Room for concluding them not to be originally in any Degree legislative, because it would be absurd to suppose, that Parliament should be so extremely sedulous in its precautionary Provisions against the Abuse of petty Regulations of Police, exercised within a very narrow Circuit, whilst it authorized without any Sort of Controul a boundless Exercise of legislative Power throughout the whole Extent of the British Possessions, present or future, in that Part of India.

Your Committee observe, that if the Governor General and Council could be justified in the Arrangement, under the largest Construction of these general Powers; yet it does not appear that they have conformed to the Directions necessary to give Validity to any of their Actions, when judged by that Statute; for in the next Section, that is, in the 8th, it is enacted as follows, "That in all Cases whatsoever wherein any Difference of Opinion shall arise upon any Question proposed in any Consultation, the said Governor General and Council shall be bound and concluded by the Opinion and Decision of the Major Part of those present."

Your Committee find, that a Difference of Opinion did arise; and the Minute of this Appointment was handed about to the Houses of the several Members, in what they call Circulation, but was never brought into the Council at all, and therefore never debated Face to Face, or decided by any Majority of the Persons present.

Mr. Francis being examined to this Point, admits this Mode of Proceeding to be against Law. But says, that in many Cases, particularly when the Ships are on the Point of Departure for Europe, it is impossible, consistently with the Nature of their Business, formed often of a great Number of minute Particulars, to have every Matter on which a Difference may arise, settled in Council as the Act directs.

Your Committee are of Opinion, That the most dangerous Consequences might arise from suffering the Council to obey or disobey a positive Law, according to their Ideas of Convenience. But this Mode of transacting Business, contrary to the essential Nature of every Council, and of every deliberative Act, leads so directly to the Encouragement of dark Cabals, and of insidious Practices to seduce the Opinions of Counsellors, that if it were not against the clear and express Provisions of an Act of Parliament, it must be considered, in itself, as wholly irregular and unjustifiable.

It is possible that the Offence of acting in this Manner may admit of considerable Alleviation, from the Nature of the Business to be done. But so solemn an Act as the Establishment of such a Court, with such immense Powers, can never be excused or palliated, by any Idea of Minuteness of Object, or of necessary Haste in attaining it.

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[ 45 ]

The House will probably find it adviseable to limit the Directions of the Act of Parliament, for collecting the Sense of the Council, to such Things as are most essential; leaving others to be transacted at the Discretion of the Governor General and Council. By such a Method, on the one Hand, Business may not be obstructed by useless Formality; and on the other, a Stop may be put to that most dangerous Practice of occasional Dispensation with Acts of Parliament; which at First beginning probably in lighter Concerns, has already, in so short a Time as since 1773, been extended to the highest Acts of legislative Authority.

Your Committee, having reflected on the Exercise of these high legislative Powers by the Governor General and Council, and weighed the Conveniences and Inconveniences on both Sides, recommend it to the serious Consideration of the House, if any such Powers do by Law exist, whether those, and others equally liable to Abuse, should be permitted to remain in that Board, constituted as it is.

The whole Body now acting as Legislator in Bengal, consists, at most, but of *Five* Persons; upon Difference of Opinion, their Acts are but the Sense of *Three*; by not unfrequent Absences, *Two* may decide; and if but Two are present, which is sometimes the Case, the First in Rank, having a Double Vote, the whole Power is virtually in *One*. The Arrangement for Sir Elijah Impey was approved by Two only; and though formally it was the Act of the whole Four, in Substance was that of no larger Number. If to the Consideration of the Smallness of Number, be added that of the Manner of collecting Opinions, in what is called Circulation, that is, without Debate, Discussion, or personal Conference, this Power in these Hands, and so exercised, will appear in a Light truly serious. So small a Body was probably never known to be vested with legislative Powers, in a subordinate Capacity, under any Form of Government. Your Committee therefore recommend, whether it would not be proper, that no considerable Alteration shall be made by the Governor General and Council, or any Authority derived from them, in the Administration of the Public Affairs, whether in the Rules of Law, or in the Form of Judicial Institutions, or in the Tenure of Landed Property, or in the *Mode* of collecting the Revenues, or in the Imposition of new Taxes, or in the Creation of new Civil Offices, or in the Increase of Emoluments to those already created (exceeding a small Sum to be settled) without a Publication in the Supreme Court at Calcutta, of the specific Instrument by which such Acts are intended to be done; which Instrument shall be transmitted to the Court of Directors, and shall not be of any Force or Effect until it be sent back with such Alterations and Amendments as shall seem necessary by a General Court of the East India Company, and by His Majesty in Council.

The Source of many Grievances and many Corruptions, lies in the bold Licence of the Company's Servants, in shaking ancient Establishments, in lightly adopting new Projects, which give Place to others, when the irregular Motives which originally created them, appear to require their Destruction. The Powers thus to be restrained, Your Committee conceive not to be among the political Powers which require an immediate Proceeding on the Spot; and perhaps more Advantage is derived from Delay in the Execution of new Projects, and in the Grant of new Emoluments, than Mischief is to be apprehended from holding any of them under a very long Deliberation. Experience has shewn, that it is more adviseable to have the Principles of those Regulations well discussed, before they are adopted, than to take the Means of Remedy after they are made and fully executed.

1st, Because if the Provisions concerning Regulation, as they stand in the Act of 1773, were to be applied to them, the Power given to the King and Council is only to annul *in toto*, and not to modify or correct. By which Omission, an Ordinance, evil in many Respects, may be suffered to remain, upon account of some plausible, or really good Part, which it is not adviseable to change; and it is not difficult to construct in this Manner the most exceptionable Regulations.

2dly, Because bad Regulations being very frequently made for bad Purposes, which are for the most Part temporary and personal, all the Ends of such a Regulation are answered, and most of its Mischiefs produced, before it can be annulled by any Authority in this Kingdom.

3dly, The annulling the Regulation, if it operates retrospectively, may dangerously alter the Condition of Individuals, who may derive Titles under it. If only prospective, it leaves Individuals the Mortification of having suffered under an Ordinance, which the ultimate Authority has considered as unfit to be made.

4thly, The Act of the 13th of the King is only enabling, that is, to make Regulations; but not directory, with regard to what shall or shall not be the proper Subject of this Power; by which Defect, whether through Inadvertence or Design, it is to be feared that many Things have been done as Acts of Administration, which were in Reality Acts of Regulation; and thereby the Provisions in the Act, to prevent Abuse in making Ordinances and Regulations, have been entirely frustrated.

5thly, The Inconvenience from their Assumption of this Legislative Power, exercised under the Form and Manner of an Act of Administration, strongly appeared in the Case now before Your Committee. For whilst the Disputes between the Supreme Court and the Council General were under SEL. COM. REP. I. M the

the Consideration of Parliament, the Council has undertaken, by an Act of its own, to appoint a Court upon Principles totally different from those established in the Act of Parliament. It is not difficult to discern the Confusion into which such a Power, so exercised, must involve all Authorities from the highest to the lowest.

The Governor General and Council, from their local and official Situation, are very fit to suggest, but very unfit, for many Reasons, to be the sole Makers of Laws and Regulations, or Disposers of Revenues to the private Emolument of any Person.

Your Committee having observed, as they conceive, fully on the Nature of the Powers claimed or assumed by the Governor General and Council, and on the Authority from which they are supposed to originate, and having suggested their Ideas of Correctives and Directions to that Authority, proceed to take into Consideration how far the Office given under that Authority to Sir Elijah Impey, may be affected by the Salary annexed; and how far the Legality of the Proceeding may be justified, under the Act of the 13th of the King.

In the Act of the 13th of the King, Your Committee find that the Salaries of the Judges are qualified by the Description of "certain and established;" and the Governor General and Council, and the Judges of the Supreme Court, are forbidden to receive, over and above those Salaries, "any Present, Gift, Gratuity, or Reward." The Salaries of the Judges, and the Governor General and Council, are further declared to be "in Lieu of all Fees of Office, Perquisites, *Emoluments, or Advantages whatsoever.*" In consequence, they are forbidden to take them in *any Manner, or on any Account or Pretence whatsoever.* The same Principle is laid down in the Charter of Justice, so far as it regards the Judges, with a Reference to the Act.

The Act, it is true, does not in express Words and specifically prohibit either the Judges or the Governor General and Council from receiving the same Emoluments, which are forbidden in general Terms, in the Way of Salary for the Execution of other Offices: but Your Committee are of Opinion, that the Judges, or the Governor General and Members of the Council General, in taking such additional Profits, under Colour of other Offices, act clearly against the Spirit of the Statute, and frustrate the good Purposes of the Legislature in appointing *fixed Salaries* to their several Offices. The Words of the Act which prohibit the taking of further Emoluments, are no stronger where they relate to the Council, than where they relate to the Judges; and the Prohibition to both is sometimes combined together in the same Clause. The Chief Justice, by his Acceptance of this Employment and Salary, has given an Opinion, and an Example, under which the Members of the Council may distribute among one another, as many of the Offices of their Establishment as they think fit, and may annex to all those Offices such Salaries as are agreeable to their Desires. It is not necessary to point out the Door which this Practice lays open to Avarice, Rapacity, and Monopoly, and how it tends to render the Governor General and Council the Rivals and Competitors of the junior Servants, whom it is their Duty to protect, and to forward according to their Deserts.

If the Duties of the Supreme Court are light and trivial, an Establishment of so little Utility, and so vast an Expence, ought to be abrogated. If the additional Offices have a Duty, they interfere with the Duties of the Court: If they have no Duty, their Existence is an Abuse. It does not appear, that the Salaries of the Judges have been settled upon narrow and illiberal Principles. If they shall be found insufficient, they ought to be encreased by *Parliament*; but the Judges ought not to be permitted to make them up, by oblique Means, to the Standard of their own Desires. For this indefinite Capacity of taking Emoluments, not only renders the Judges dependent through the Offices, which they have actually obtained; but through those, which they may even afterwards wish to obtain, and leaves no Bound to Influence. Thus the Dependence of the Judges on the Crown, which appoints them, is limited, and cannot be encreased but by *Act of Parliament*;—their Dependence on the Company, or rather the Company's Servants, is infinite; as the Salaries to their new Offices may be raised, and the Offices themselves multiplied without any Limit.

The Chief Justice seemed formerly to have entertained Ideas of the Independence of the King's Judges, and of the Limitation of their Views to the Salaries of their Office under the Crown, very different from those under which he accepted an Office and a large Salary during the Pleasure of certain of the Company's Servants, and with an Obligation to yield Obedience to all their present and future Regulations. In a Letter written to the Court of Directors, signed by him and the other Judges, and dated the 14th of September 1776, he expresses no small Uneasiness on some Orders given by the Court of Directors, which prevented the easy Remittance of the Whole of the Savings from the Judges Salaries, at the just Value in England; and stating, that the Governor General and Council had been in that Point as liberal as he could expect. He adds, "But had they been still more so, we again submit to your honourable Board the Impropriety of its being left to the Direction of your Government here, whether the Members of a Court of Justice shall or shall not have the Enjoyment in England of such Savings, as they are able to make in Bengal. The Influence which it tends to create, and its Consequences, are of a Nature so degrading to the King's Judges, and "may

" may be so subversive of Justice, that we hoped the least Surmise of it would be sufficient to procure an effectual Redress against it."

He was so very delicate and scrupulous, that the mere mercantile Accommodation of a Remittance, and that only from the Savings of the Salary appointed by Parliament, which he supposed had a Tendency to create Influence in the Company's Servants, was so uneasy to him, that the whole Letter is a strong Demand and Remonstrance of Right on the Subject. In Addition to the above Reasons, and others explained at large, he enforces the Justice of his Demand, by laying open his Opinion with regard to the Limitation of the Views of the Judges, and their Difference in that Respect, from the Company's Servants:—“ Some of them (the Company's Servants) are dependant on you for Offices, which they hold in Possession or Reversion, or for other Emoluments granted and revokable by you, which may give reasonable Expectations of the like to the rest. We have nothing more to depend on than our Salaries. We must be obliged to insist on our Rights. We can have no Means of acquiring Property, other than our Salaries; we therefore can remit only our Savings out of them. We hold no other Offices, we receive no other Emolument from you.”—These were, at that Time, the Sentiments of the Chief Justice, expressing in a clear Language a sound Opinion.

Your Committee, agreeing with the Sentiments against the Practice of the Chief Justice, are decidedly of Opinion, that nothing can prevent the Supreme Court from becoming a Grievance of the heaviest Kind, instead of a real Benefit to the native Inhabitants, but the keeping of the Judges in a State of absolute Separation from, and entire Independence, directly and indirectly, of the Company's Servants.

The next Matter which Your Committee recommends to the Consideration of the House, is the Tendency of this Transaction to the Benefit or Prejudice of the Natives of India, and the Security and Advantage of British Government in that Part of the World. And here Your Committee have the Satisfaction to find, in the Course of their Examination, that these Interests are, in Effect, one and the same. There is nothing which can strengthen the just Authority of Great Britain in India, which does not nearly, if not altogether, in the same Proportion, tend to the Relief of the People; and nothing, which renders those, who exercise the subordinate Trusts of Power, less responsible, or less obedient to the Government from whence that Power is derived (whether this be effected by Compromise, Cabal, Connivance, or Connection, either there or here) which does not tend to depress the Minds, and destroy the Prosperity, of the Natives.

The manifest Tendency of this Transaction, in all its Views, is, “ to render Complaint to the Sovereign Power of the State unsafe and ineffectual.”

This Resort to an higher Power, of great Consequence in all Civil Society, is the only Resource of a People, unfurnished with independent Privileges, or Means of popular Controul upon its Magistrates. Whatever, therefore, tends to make the Resort to this Protection a Matter of Difficulty and Danger, goes to the direct Destruction of the Natives of India.

These Natives had been encouraged by the supreme executive Powers of the Country, to complain of the Supreme Court of Judicature; and not only to complain, but they were authorized, and even actually called upon, to resist the Process of that Court, as highly injurious to Government itself. They had scarcely sent off the Complaint, when they beheld the principal acting Person in that Government, delivering them up to the arbitrary Discretion of the principal acting Person in that Court.

On the other Hand, those of the Natives, who had given Credit to Sir Elijah Impey's frequent Declarations, that the Supreme Court was instituted for their Protection against the powerful Servants of the Company, and had, on that Ground, acted so as to incur the Displeasure of the Governor General, now see the First Judge of that Court accept a great judicial Office from the Hands of the chief Servant of the Company, and thereby becoming dependent upon those, against whom the Natives were taught to believe he was intended, on their Part, as an uninfluenced and a powerful Controul.

2. This Arrangement has also an evil Aspect on the Authority and Credit of the Supreme Court. The younger Judges must feel themselves abandoned by their Chief; and, it is to be feared, that in consequence of it, One of these Two Events will happen; either that they will neglect their Functions in Despair, and thus the Court will become (if already it has not become) an useless Incumbrance on the Revenues of Bengal; or, what would be worse, that these Judges, taught by the successful Example of their Chief, may, by the Renewal of a vexatious Exertion of their remaining Powers, put themselves into a Posture of compounding the Disputes between the Government and the Court, by obtaining lucrative Employments for themselves.

Its ill Effect on the Practitioners in that Court must also be considerable. The Chief Justice had adopted and transmitted a Complaint, on the Part of the Attorneys of Calcutta, representing the Loss, which they must inevitably suffer, by the Reduction of Business in that Court, as very grievous. He stated that Business as then reduced by One Third, and he declared his Apprehensions of its shortly

being reduced to little or nothing. Major Scott has established the Sagacity of his Predictions, and informed this Committee, that several of the Practitioners in that Court were obliged to abandon their Profession, and to betake themselves to a military Life. If this had been foreseen, or had happened from the Cessation of a litigious Spirit, the Complaint would have been indecent; but if from the total Loss of the Authority of a necessary Court, the Person who made the Complaint ought not, by any Act of his, to have contributed to a Loss, which, in its Consequences, involved the Ruin of those whom he affected, and whom it was his Duty, as far as Reason and Justice went, to take under his particular Protection.

3. Those Members of the Council, who had engaged in strong Measures, in Concurrence with their Principal, and had been in the same Manner abandoned, and their Adversary placed by their Associate in an Office of the greatest Power and Emolument, may as probably become fearful or indifferent in asserting the Rights of the Company in future; or may take the Turn of compounding their Duties, according to the Mode established.

With regard to the Provincial Courts now submitted to Sir Elijah Impey's Controul, his Opinion of them is, that " they are *planned* on wise Principles, but so perverted in their *Execution*, as to be " the greatest Instruments of *Oppression* which the *miserable* Inhabitants of the Country labour under." As those Courts, so stated to be abused, and at that very Time abused, are in the Hands of the subordinate Servants of the Company, and this Opinion, if not always perfectly known to Mr. Hastings, must of Necessity become Public; Mr. Hastings must appear, either to have placed at the Head of these Courts Servants so ill-disposed, that no mere Power of Revision could sufficiently guard against their evil Practices; or, if he thought them innocent, must have placed over them their Accuser as their Judge, and one, who, even to justify his own unretracted Charge, would naturally be an harsh Censor of all their Actions, and a prejudiced Re-hearer of all their Judgments. The Company's Servants will not appear, in this Transaction, to be either justly coerced, or kindly protected, by Mr. Hastings. The respectful Subordination, so necessary to this Service, must be greatly impaired.

4. The British Inhabitants, who, concurring with the Governor General, were of Opinion that the Chief Justice had made an excessive Use of his Power in the Supreme Court, see him now invested by their Governor and Fellow Complainant with new and far greater Powers than those which they had stated him to Parliament as having abused. It appears in Evidence, that they are much discontented with this Arrangement; and it is impossible that it should not operate as a great Discouragement to any Exertion of theirs, either in their own Favour, or in that of others.

And Your Committee are of Opinion, That the Protection of British Subjects, thus deserted in their Complaints, is no trivial Matter, as, on Account of the comparative Smallness of their Numbers, it might appear; for it is through the Means of the Humanity, Courage, and Fidelity of those British Subjects, especially through the Courage and Fidelity of those who profess the Law as Counsel or Attorneys, that a Complaint of the Natives can come before any Power in Great Britain, capable of affording Redress to their Grievances.

The Case of Mr. North Naylor, Attorney to the Company, is of itself sufficient to render all such Complaints, in future, an Affair of the extremest Hazard. Mr. Naylor, who appears to have been a Person of considerable Industry and Abilities, was employed by the Governor General and Council to defend that Board, and some Persons of Distinction amongst the Natives, against the late Suits in the Supreme Court. The Supreme Court attached Mr. Naylor for a Contempt, on Account of some Steps he had taken, under the Direction, and in Favour of, his Clients; and on his Refusal to answer a Series of Interrogatories (in which Refusal he was supported by his Clients) he was detained in the Common Gaol of Calcutta, a miserable and pestilential Place, upwards of a Month. For these Interrogatories, which Your Committee conceive to be in many Parts wholly unjustifiable, they refer to their Report of last Session, and to the Cossijurah Appendix to that Report, N° 23.

Mr. Naylor, who was in no good State of Health at the Time of this rigorous Imprisonment, and having had, during its Continuance, some Family Misfortunes, died soon after his Release upon Bail; his Death being, in all Probability, hastened, if not caused, by his Sufferings under Confinement. The Council, indeed, considered, that whatever the final Judgment of the Court might be, Mr. Naylor could not, after his suffering Imprisonment, and the Disgrace he had undergone, serve the Company any longer as Commissioner of Law Suits, and Attorney on Record; therefore conferred on him, as some Retribution, the Place of Register of the Court of Sudder Dewanee Adaulut, which they then revived, with a Salary equal to that of his other Offices. Whether that Place could be a full Compensation for the whole of his Losses, does not appear: He did not live to make the Experiment: For his Imprisonment and Disgrace, it was none.

The Governor General and Council, instead of effectually pursuing their Complaint to obtain Reparation for Mr. Naylor's Character, and Justice for his Sufferings, in Effect have passed Judgment both on Mr. Naylor's Conduct and their own, by rewarding the Author of Mr. Naylor's Sufferings, and the Object of their own Accusation. Nothing has been done towards obtaining any Security for those, who might venture hereafter to serve the Company in their Law Affairs; the whole Transaction leaving

leaving a memorable Example to Natives, to British Subjects, and to Practitioners in the Courts, to deter them from asserting any public or private Right in Course of English Law; since a Person, conversant in that Law, acting under the highest Powers of that Country, had suffered so grievously (it may be even to Death) for supporting a Cause of the Natives, patronized by Government.

Your Committee, considering the Safety of Complaint as the Foundation of all Redress to Grievances, find themselves indispensably obliged to call the serious Attention of the House to the Case referred to in their Report of last Session, p. 59; namely, the Case of the Rajah Nundcomar.

A Native of the highest Rank, and of an Order reputed sacred throughout India, was capitally executed in the City of Calcutta, with Circumstances the most shocking to the Prejudices of that People, and which conveyed, according to those Prejudices, the Idea of Offence and Insult to all Classes of Men. The Crime, for which this Native was thus executed, namely, that of Forgery, is not capital by the Laws of that Country; though, by a Statute made within this Century, it has been made so in England. The criminal Fact alleged was at that Time, and had long been, in a Course of Examination in a Civil Suit, the Event of which was to be decided by the Authenticity of the Instrument said to have been forged. In so extraordinary a Case, the Execution of the Sentence might and ought to have been respite, until His Majesty's Pleasure should be known. The Omission of such Respite is the more to be noticed, because the Chief Justice, in his Letter to the Earl of Rochford, of the 25th of March 1775, complains, that "he had always felt great Inconveniences from " being obliged to inflict upon Offenders the same Punishments which are inflicted in England for the " same Offences." His First Instance is in the Application of the Law of capital Punishments. He certainly had it in his Power to respite the Sentence.

The Circumstance, which brings this Omission Home to the Point at present under the Observation of Your Committee, is this; that the Rajah, thus denied a Respite, was, at the very Time of his Apprehension, under the Protection of the Council, in the Midst of his Evidence against Mr. Hastings, the Governor General, on a Charge of Peculation and Abuse of his Office, in taking Money from the Natives.

Your Committee has received it in Evidence, that this Trial and Execution was looked upon by many of the Natives as political; nor does the Committee conceive it possible, that, combining all the Circumstances together, they should look upon it in the Light of a common judicial Proceeding; but must regard it as a political Measure, the Tendency of which is, to make the Natives feel the extreme Hazard of accusing, or even giving Evidence of corrupt Practices against any British Subject in Station, even though supported by other British Subjects of equal Rank and Authority. It will be rather a Mockery, than a Relief to the Natives, to see Channels of Justice opened to them, at their great Charge, both in the Institution and in the Use, and then Appeals, still more expensive, carefully provided for them, when, at the same Time, Practices are countenanced, which render the Resort to those Remedies far more dangerous than a patient Endurance of Oppression, under which they may labour.

Your Committee find, from their Enquiry, that the Natives, who are Men of Business, and who have Trust, or seek to be in Trust with Europeans, are, by Habit and Education, reserved and timid, patient and dissembling, not disposed publicly to complain of Abuse, or openly to resent Injury; and much less to bring to Light any Fraud, Extortion, or Peculation; and that, though litigious with their Equals, they are disposed to seek Refuge against the Abuses of Station, rather in low Intrigues, and the miserable Arts and Subterfuges of Servitude, than in a manly Assertion of their Rights, before an Authority enabled by Power, and bound by Duty, to relieve them. It is much to be apprehended, that they may find it more eligible to compound with the Rapacity of the Officer next above them, than to involve themselves in a doubtful, intricate, and distant Course of Redress, which, calling in new Powers, less understood, and as expensive as the First were rapacious, will only serve to vary and to aggravate their Vexations, rendering, in the End, the Pursuit of Remedy for some partial Grievance, the Means of their total Ruin. Others, seeing no Redress obtainable by fair and legal Courses, will secure Protection and Profit by becoming Instruments in the Oppressions of their Fellow Citizens; and it is to be apprehended, that it will inevitably grow into a Principle both of false Honour and real Policy, in Persons engaged in these criminal Trusts, to conceal every Act of Extortion, to which they are bound to submit, as well as every Corruption and Oppression, in which they are concerned. The Natives will be thus confirmed in all their evil Habits; and the Europeans, by being brought themselves into the same Condition, which produced those Habits in others, instead of improving the Natives by the Boldness and Openness of European Manners, will themselves be led gradually into the Refinement, Mystery, Dissimulation, and Prevarication of Indian Banians and Gomastahs. By this Means, such an Obscurity and Confusion will be spread (and is indeed already growing) over all the Transactions of that Country, that no Sagacity will be able to penetrate into Abuses, nor any Power be sufficient to convict them.

These Mischiefs being the direct Result of the late Transactions at Calcutta, in which the leading Persons have mutually abandoned their Principles, their Associates, and their Dependents, all Trust in any Branch of Government is dissolved; and it is the Opinion of this Committee, that, if an effectual Proceeding be not speedily adopted by the House, and persevered in with a Constancy equal to that with which some Persons in Bengal have persevered in their Practices, Parliament has received the last Complaint of Grievance from India.

The Manner in which Intelligence of Proceedings in India is communicated to Europe, comes under the last general Head of the present Report. Your Committee are of Opinion, that the Governor General and Council (and Judges, where they are concerned) should be compelled to an ingenuous and candid Statement of the Case, on which any proposed Regulation is to be made; and that they should be obliged to expose the Whole of their Design together, in One Piece; without which, it will be impossible to form a true Judgment on its Merits. The Mode of Transmission, in the present Case, has been found so extremely improper, that, if a more clear and ingenuous Method of Communication is not secured, all Plans of Reformation in India must be defeated.

In the First Proposition of Sir Elijah Impey's Office to the Members of Council, no Mention was made, or even hinted at, of any Salary. On that State, it was carried in the Consultation; in that State it was accepted by Sir Elijah Impey; and in that State (so far as the private Dispatch brought by Mr. Shakespeare, who arrived on or before the 2d of July last, gave any Account of the Proceedings) it was at first transmitted to Great Britain.

The First Dispatch which arrived in England, was not directed to the Court of Directors; but came from the Governor General, as a private Communication to the Chairman of the East India Company. The Chairman caused it to be privately communicated to Persons in high Office very soon after its Arrival; but held it back from the Court of Directors, as not being regularly authenticated, until the 24th of October, although he had laid before them other Papers, of not greater formal Authenticity, and which had been received by the very same Conveyance.

Whether the Arrival of the private Dispatch brought by Mr. Shakespeare, so long before that addressed to the Court of Directors (the Two having been sent in Ships which sailed at the same Time) was in consequence of Orders to pursue the Means fittest for giving the private Dispatch the Start of the public, or has happened by mere Accident, Your Committee cannot determine; but they think themselves obliged to point it out in this Place.

In India, the Scheme having proceeded thus far, and the Governor General having first secured the main Question for the Appointment, in due Time proposes the Salary; but, on the Prospect of Opposition from Mr. Wheler and Mr. Francis, Sir Eyre Coote being absent, the Matter is suffered to lie dormant: Mr. Francis being departed, and Mr. Wheler left unsupported, the Proposal of the Salary was, as Your Committee have Reason to believe, from undoubted Evidence, renewed, and of course carried.

The Establishment of the Salary was made on the 6th of January, and Mr. Scott departed with Dispatches to the Company from Mr. Hastings, and with his Powers as Agent, to defend his Proceedings, on the 9th of the same Month; but no public official Account of that Salary has been transmitted, or at least laid before the Directors; though they have so little Reason to doubt the Fact, that they have stated it as a Part of the Case laid before Counsel.

These several Members of the Design came to Europe, not only separate, but each Part comes at first in the Shape of private Intelligence.

Mr. Hastings, in sending an Agent to Great Britain, to explain a Conduct which stood so much in Need of Explanation, has in this Respect done his Duty. Major Scott, his Agent, is also his Aid de Camp and private Secretary. He is a Person in Confidence, and declares himself to be fully prepared with all the necessary Instructions, and furnished with the necessary Documents. But Your Committee, on Enquiry for a Copy of the Consultation concerning Sir Elijah Impey's Salary (which he does not deny to have been settled, though he will not admit himself to be clear that it is accepted) he finds he is not furnished with this sole Paper, so essential to Mr. Hastings's Cause: He supposes it owing to some Neglect of the Clerk. After leaving Calcutta, Mr. Scott, the Agent, makes a considerable Stay at Madras, and receives Letters from Mr. Hastings; but still this Paper is forgot.

Sir Elijah Impey, on his Part, has sent no Agent at all, nor authorized any, whom the Committee can find, to undertake his Defence; and though he must be conscious that the whole Proceeding was unpopular, and must be questioned in Great Britain; and though he beheld Vessel after Vessel, and Officer after Officer, departing for Europe, he has not thought proper to send, by any Conveyance, any Account whatsoever of this Transaction, either to the Ministers of His Majesty, under whose Commission

Commission he acted in his First Office; or to the Court of Directors, under whose Authority he received his Second, and from whose Treasury he is to receive the vast Appointment of his Offices, both old and new. This was the more extraordinary, as the Chief Justice, on former Occasions, was sufficiently liberal of Information; and on the Matter of the Remittance of the Profits, derived from his legal Salary, had written a very long Letter to that Court. He had also long since transmitted a Plan relative to the Country Courts, and other Law Arrangements; and had, in his Letter to the Secretary of State, made an Offer to assist, without desiring any Vote, any Power, or any Emolument, in this very Court of Sudder Adaulut, merely as an Adviser, and absolutely disclaiming every View to Interest in his Desire of sitting there.

As it is rather by Management, than by direct Opposition, that the Authority of Great Britain is weakened in India, Your Committee think it expedient, without deciding on the actual internal Motives of the Parties, to state to the House the possible Policy, which might, in other Cases, dictate a Suppression of all Communication on one Side, and such imperfect, partial, and garbled Communication on the other, in order that the House may take Measures to prevent the Mischiefs arising from such unconnected and irregular Correspondence in future.

It may be taken for granted, that the great Stand of Objection to any new Establishment will be made on the First Proposition; and, knowing that Topics of the Disinterestedness of Parties, in any Transaction, have no small Force in recommending any Scheme to those, who may not be furnished with the Means of judging on its internal Merits, it may be first produced as a Measure from whence none of the Parties are to derive any Profit. In this Light, if a Sanction can be obtained to the naked Office, the lucrative Parts, which in Reality may be Principal in the Formation of the Design, will afterwards appear only an Accessary and Subordinate; they will pass off as included in the First Approbation, and the several Parts, dropping in one after another, will excite little Attention, and no Alarm.

With regard to a total Withholding of Information by one of the Parties, where there may be Cross Charges, and where the Decision is distant in Place, and late in Time, more Advantage might be derived, in some Sort of Cases, from having made no Defence at all, than from any Defence that could be made; whilst it was argued, by the Friends of the Parties in England, that it would be unjust to condemn a Man unheard, or even to touch the Measure he was concerned in, as indirectly tending to condemn him; and thus all Determination on the Merits of questionable Conduct, and even questionable Establishments, would be postponed from Year to Year. The First Impression of an evil Act would grow fainter every Day; the Spirit of Enquiry and Prosecution would cool by Time, till, at length, the Order and Peace of the subordinate Government would be pleaded against its Reformation.

Your Committee has been at the greater Pains to unravel a dangerous System of practical Prevarication, which may very easily be foreseen, if an irregular and partial Communication from India is permitted; because, by such unworthy Artifices, the wise and benevolent Designs of the King and Parliament may be effectually frustrated, if Persons there, covering an improper Conduct by an improper Neglect of Information; diverting the Attention from a reprehensible Act of an old Date, by committing a new one of the same Description, and, at length, establishing Corruptions as a Sort of prescriptive Rights, are suffered to fatigue British Government into an Acquiescence in their Misdemeanors, and the Native People into Despair of any Redress.

Your Committee is sensible, that the very Distance between Bengal and Great Britain affords great Advantage to improper Practices. For this Your Committee is unable to find any Remedy, but in the substantial Nature of Parliamentary Proceedings, and in using all possible Promptitude in them. Whenever a strong Ground of Charge is laid for an Abuse of Office in India, and that the Parties charged did, or might, but through their own Fault, know of that Matter, and are afterwards negligent in giving full Information, so far as it comes to their Knowledge, they ought to be called Home, if it were only for that very Negligence; and ought to be compelled to answer, on their Return to England, both to the Charge, and to the Neglect: Otherwise, Complainants and Witnesses will die, Misdemeanors will be compounded, and the Complaints antiquated, long before they can be brought to any Decision.

The People of India do not partake the Benefits of the British Constitution; and it is not proper to load them with its Inconveniences. The Rules of formal Justice, established in England, and in most other European Countries, may have been made with a Reference to Advantages which are of a more substantial Nature, and which are to be enjoyed within the Limits of Countries where they prevail. They are originally made upon a small and a connected Scale of Empire. If such local Maxims are adhered to in their Rigour, and applied to Process coming from the remotest Parts of the World, such a Delay of Justice would be worse than a total Denial of it.

The People of India can derive no Consolation from Maxims and Modes of Proceeding in Great Britain, which never have operated, and never can operate, in Favour of their Complaints ; but which have their full Force in Favour of the Persons, against whom they may have Reason to complain. These being most commonly Persons of great Wealth, and either originally possessing, or recently forming, extensive Friendships and powerful Connections in Great Britain, the Natives of India, who cannot comprehend the Principle of our Proceedings, but who perfectly comprehend the Force of Wealth, Friendship, Favour, and powerful Connection, will be apt to attribute their Failure of Relief rather to the Causes which they do, than to those which they do not understand. The Laws, therefore, relative to Persons in Power in India, ought, as Your Committee conceive, to be accommodated to their Situation ; and Parliamentary Proceeding appears to be the only Mode, in which Relief for Indian Grievances may be had, with Safety to the Rules of Judicature in England, or with Effect in India, if Parliament should not voluntarily put Fetters of Form on itself, where the Constitution has put none.

Your Committee think themselves bound, in concluding their Observations on this their First Report of this Session, to remark, that Mr. Francis and Mr. Wheler appear to have acted consistently and properly in resisting the new Arrangement of the Court of Sudder Adaulut ; and that Justice Chambers and Justice Hyde, for any thing which appears to Your Committee, have had no Share in, or been assenting to, any Part of it.

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# A P P E N D I X.

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## A P P E N D I X.

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### A P P E N D I X, N° 1.

*Extract of a Letter from the Chairman and Deputy Chairman of the East India Company; to the honourable Warren Hastings, Governor General of Bengal; dated the 1st, and dispatched the 3d, of August 1781.*

YOU have been informed, by our Letter of the 9th of June last, that Affairs on the Coast were under the Investigation of a Secret Committee of the House of Commons—By this Conveyance we send you Copy of the First and Second Reports of the said Committee of Secrecy, with the Appendix to the Second Report; but the Appendix to the First Report is not yet printed.

On the Ship Deptford, was forwarded a Copy of the Report and Appendixes of the Select Committee, respecting the Bengal Judicature—We now send another Copy of that Report, and of the Act passed, for your further Information.

An Act of Parliament having also passed during the last Session, by which the Company's Charter has been prolonged for Ten Years, we transmit you Copy thereof for your Information and Guidance; and enjoin strict Attention and Obedience thereto.

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### A P P E N D I X, N° 2.

*East India House, 26th December 1781.*

At a Conference;

P R E S E N T,

Laurence Sulivan, Esquire, Chairman,  
Sir William James, Baronet, Deputy Chairman,  
Brigadier General Richard Smith.

*Representation by General Smith.*

I AM directed by the Select Committee of the House of Commons, to represent to you, Mr. Sulivan, that as, in your Evidence before that Committee, upon being asked, If the Court of Directors had sent any Orders relative to the Appointment of Sir Elijah Impey to be Judge of the Sudder Dewanee Adaulut; you stated to them, That it was a Matter of Importance; and

A P P E N D I X, N° 2.

that the Company had ordered the Opinions of the Attorney and Solicitor General, Mr. Dunning, and the Company's Counsel, to be taken before they would come to any Decision on it :

*Quest.* That as those Opinions are now received, the Committee wish to know, if the Company have sent any Orders in Consequence ?

*Ans.* No.

*Quest.* If they intend to send any Orders in Consequence ?

*Ans.* Yes ; the Chairman and Deputy will think it necessary to recommend to the Court of Directors, that some Orders should be sent, with the Counsel's Opinions ; but nothing decisive.

Upon this Answer, General Smith represented from the Committee to the Chairman and Deputy, That as this Appointment was now under the Consideration of the Committee, whether they would think it proper to send any Orders upon the Subject, until the Committee made their Report, and the Sense of the House of Commons should be known upon the Appointment of Sir Elijah Impey to the Office of Judge of the Sudder Dewanee Adaulut ?

*Answer by the Chairman and Deputy Chairman.* The Chairs agree to propose to the Court, to mention the present State of Proceedings in England on that Subject, in their next Advices to India ; and to state, that as the Subject is now under Consideration of Parliament, so soon as any Determination is had, the Servants of the Company shall be advised thereof, for their Guidance.

Lau. Sulivan.  
W<sup>m</sup>. James.

*At a Court of Directors, held on Tuesday the 15th January 1782.*

The further Consideration of a Paragraph, which had been approved on, the 4th Instant, and afterwards submitted to and approved by Administration, for the General Letter to Bengal, relative to the Appointment made by the Governor General and Council of Sir Elijah Impey to be Judge of the Sudder Dewanee Adaulut, was proposed, and the same being now read, and further considered,

A Motion was then made, That Sir Elijah Impey be removed from the Office of Judge of the Sudder Dewanee Adaulut.

And the Court entering into a Debate thereon ; during the Course whereof, the Proceedings had in the Council General, on the Establishment of that Office, and the Appointment of Sir Elijah Impey thereto, being read ; after a further Debate,

And the said Paragraph and Motion having been again read ;

And the Chairman having stated to the Court, the Proceedings had, and also the Minutes of a Conference held by himself and the Deputy Chairman, with Brigadier General Richard Smith, Chairman of the Select Committee of the House of Commons, appointed to take into Consideration the State of the Administration of Justice in the Provinces of Bengal, Bahar, and Orissa, relative to the Appointment in Question ; and,

The said Minutes being then read,

It was moved,

That the Paragraph relative to Sir Elijah Impey, that passed the Court on the 4th of January last, be rescinded.

And the Question thereon being put by the Ballot, and it appearing there was an Equality of Votes,

The Court proceeded, agreeably to the Directions in the Company's Charter, to the Determination of the said Question by Lot ; and Two Lots being accordingly prepared,

And the Treasurer being called into Court, he drew the Lot, which determined that the said Question passed in the Negative ; which was accordingly declared from the Chair.

Whereupon the Question, on the before-mentioned Motion, That Sir Elijah Impey be removed from the Office of Judge of the Sudder Dewanee Adaulut, being proposed ;

The

## A P P E N D I X, N° 2, 3.

The previous Question on the said Motion was demanded, That the main Question be now put; and being accordingly put by the Ballot,

The same passed in the Negative.

*At a Court of Directors, held on Friday the 18th January 1782.*

Joseph Sparkes, Francis Baring, John Smith, Thomas Cheap, and William Mills, Junior, Esquires, now delivered in the following Dissent; viz.

“ India-House, 18th January, 1782.

Gentlemen,

“ Being desirous that some Proof should appear upon the Company’s Records, of the Opinions which we expressed in Court on the 15th Instant, respecting Sir Elijah Impey’s Appointment to the Office of Judge of the Sudder Dewanee Adaulut, and the Necessity of giving Orders, by the Ships now about to depart for India, to set aside that Appointment: We take this Method to express our Disapprobation of the Proceedings of the Court on that Day, which prevented the Decision of a Motion made to remove Sir Elijah Impey from the said Office.

“ We are, with great Respect,

“ Gentlemen,

“ Your most humble Servants,

Joseph Sparkes,  
Fran. Baring,  
John Smith,  
Tho<sup>r</sup> Cheap,  
W. Mills, Jun<sup>r</sup>. ”

“ To the Honourable the Court  
of Directors of the East  
India Company.”

*Copy of the 84th Paragraph of the Company’s General Letter to Bengal; dated the 25th January 1782, ap-  
proved by the Court of Directors on the 4th of the same Month.*

We have not been inattentive to your Proceedings respecting the Appointment of Sir Elijah Impey to be Judge of the Sudder Dewanee Adaulut; but as that Appointment is now under the Consideration of a Committee of the House of Commons, and as the Committee have not yet made their Report to the House, we think it proper to wait the Determination of Parliament on the Subject, when you shall, so soon as possible, be advised thereof for your Guidance.

## A P P E N D I X, N° 3.

*Cases for the East India Company.*

FROM the Time the Dewanee of Bengal, Bahar, and Orissa, was granted to the East India Company, the whole Government and Management of the Provinces, in all Affairs civil and military, was in the Governor and Council of Bengal, or a Select Committee of them; but in certain Cases the Name of the Nabob was used, and he was held forth as the ostensible Sovereign of the Country.

In the Year 1772, the Governor and Council of Bengal established new Courts of Judicature, for the Administration of Justice amongst the Natives throughout the Provinces; which were divided into Districts. By these Regulations, a Court was established in each District, called The Mofussell Dewanee Adaulut, for Trial of civil Causes, in which the Collector of each District was to preside as Judge, in the Quality of King’s Dewan, and was to be attended by the Provincial Dewan appointed by the President and Council, and the other Officers of the Cutcherry.

## A P P E N D I X, N° 3.

The Regulations also established a superior Court of civil Jurisdiction, at the chief Seat of Government, called The Dewanee Sudder Adaulut; which was to receive and determine Appeals from the Provincial Dewanee Adaulut. In this Court, the President or Governor of Bengal, and Two Members of the Council, were to sit as Judges, attended by the Dewan of the Khalsa, the Head Conongoes, and other Officers of the Cutcherry, and in the Absence of the President, a Third Member of the Council was to sit, so that not less than Three Members were to decide on an Appeal; but the whole Council might sit if they chose it.

After the above Regulations, a Provincial Council was appointed instead of a Collector, and they were named, "The Judges of the Court of Dewanee Adaulut."

1773, 13th Geo. III. Cap. 64.—An Act was made for establishing certain Regulations for the better Management of the East India Company's Affairs; whereby, for the better Management of the Company's Affairs in India, it was enacted, "That for the Government of the Presidency of Fort William in Bengal, there should be appointed a Governor and Four Councillors, and that the whole Civil and Military Government of the said Presidency, and also the Ordering, Management, and Government of all the Territorial Acquisitions and Revenues in the Kingdoms of Bengal, Bahar, and Orissa, should, during such Time as the Territorial Acquisitions and Revenues should remain in Possession of the Company, be and the same were thereby vested in the said Governor General and Council of the said Presidency of Fort William in Bengal, in the like Manner, to all Intents and Purposes whatsoever, as the same then were, or at any Time thentofore might have been exercised by the said President and Council, or Select Committee, in the said Kingdoms."

The same Act empowered His Majesty to establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and Three other Judges, who were to have such Salaries as in the said Act are mentioned, which were to be in lieu of all Fees of Office, Perquisites, Emoluments, and Advantages whatsoever; and that no Fees of Office, Perquisites, Emoluments, or Advantages whatsoever, should be accepted, received, or taken by the said Judges, or any of them, in any Manner, or on any Account or Pretence whatsoever, other than such Salaries and Allowances as were in and by that Act directed to be paid to them respectively.

Pursuant to this Act, the King granted a Charter of Justice, and appointed Sir Elijah Impey Chief Justice of the Court; and he took that Office upon him.

Many Disputes arose between the Govenor General and Council and the Judges, respecting the Jurisdiction of the Supreme Court.

28th March 1780, the Governor General and Council established another Plan for the Administration of Justice throughout the Provinces; by which they ordained, that there should continue to be Courts of Civil Judicature in each of the Grand Divisions therein mentioned; and that over each of these Courts, a Company's covenanted Servant should preside, under the Title of Superintendent of the Dewanee Adaulut, and his Jurisdiction was to be independent of the Provincial Councils—that the Provincial Councils should try and determine all Revenue Causes; and that the Superintendent of the Dewanee Adaulut should try and determine all other civil Causes. They also established various other Regulations, of which you have a Copy herewith; by these Regulations an Appeal is given in certain Cases from the Dewanee Adaulut, to the Governor General and Council, in the Court of Sudder Dewanee Adaulut.

October 1780.—Sir Elijah Impey was appointed by the Governor General and Council of Bengal, to be Judge of the said Court of Sudder Dewanee Adaulut, as mentioned in the following Minutes.

*Governor General's Minute in Consultation, 29th September 1780.*

" The Institution of the new Courts of Dewanee Adaulut, has already given Occasion to very troublesome and alarming Competition between them and the Provincial Councils, and too much Waste of Time at this Board.—These, however, manifest the Necessity of giving a more than ordinary Attention to these Courts in the Infancy of their Establishment, that they may neither pervert the Purposes, nor exceed the Limits of their Jurisdiction, nor suffer Incroachments upon it.

" To effect these Points, would require such a laborious and almost unremitting Application, that however urgent or important they may appear, I should dread to bring them before the Consultation of the Board; unless I could propose some Expedient for that End, that should not add to the Weight of Business with which it is already overcharged.

" That which I have to offer, will, I hope, prove rather a Diminution of it. By the Constitution of the Dewanee Courts, they are all made amenable to a superior Court, called, The Sudder Dewanee

## A P P E N D I X, N° 3.

Dewanee Adaulut, which has been commonly, but erroneously, understood to be simply a Court of Appeals. Its Province is, and necessarily must be, more extensive. It is not only to receive Appeals from the Decree of the inferior Courts, in all Causes exceeding a certain Amount; but to receive and revise all the Proceedings of the inferior Courts, to attend to their Conduct, to remedy their Defects, and generally, to form such new Regulations and Checks, as Experience shall prove to be necessary to the Purpose of their Institution. Hitherto the Board has reserved this Office to itself, but hath not yet entered into the Execution of it, nor, I will venture to pronounce, will it ever with Effect, though Half of its Time were devoted to this single Department. Yet, without both the Support and Control of some powerful Authority held over them, it is impossible for the Courts to subsist; but they must either sink into Contempt, or be perverted into the Instruments of Oppression.

" This Authority, I repeat, the Board is incapable of exercising, and if delegated to any Body of Men, or to any individual Agent, not possessing in themselves some Weight independent of mere official Power, it will prove little more effectual. The only Mode which I can devise to substitute for it, is included in the following Motions, which I now submit, on the Reasons premised, to the Consideration of the Board :

" That the Chief Justice be requested to accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such other as the Board shall think proper to add to them, or to substitute in their stead; and that on his Acceptance of it, he be appointed to it, and stiled the Judge of the Sudder Adaulut."

" I shall beg Leave to add a few Words in Support of this Proposition, on different Grounds. I am well aware that the Choice which I have made for so important an Office, and one which will minutely and nearly overlook every Rank of the Civil Service, will subject me to much popular Prejudice, as its real Tendency will be misunderstood by many, misrepresented by more, and perhaps dreaded by a few.

" I shall patiently submit to this Consequence, because I am conscious of the Rectitude of my Intentions, and certain that the Event will justify me, and prove, that in whatever Light it may be superficially viewed, I shall be found to have studied the true Interests of the Service, and contributed the most effectually to its Credit.

" The Want of legal Powers, except such as were implied in very doubtful Constructions of the Act of Parliament, and the Hazards to which the Superiors of the Dewanee Courts are exposed in their own Persons, from the Exercise of their Functions, has been the principal Cause of their Remissness, and equally of the Disregard which has been in many Instances shewn to their Authority : They will be enabled to act with Confidence, nor will any Man dare to contest their Right of acting, when their Proceedings are held under the Sanction and immediate Patronage of the First Member of the Supreme Court, and with his Participation in the Instances of such as are brought in Appeal before him, and regulated by his Instructions. They very much require an Instructor, and no one will doubt the superior Qualifications of the Chief Justice for such a Duty.

" It will be the Means of lessening the Distance between the Board and the Supreme Court, which has perhaps been, more than the undefined Powers assumed to each, the Cause of the Want of that accommodating Temper, which ought to have influenced their Intercourse with each other.

" The Contest in which we have been unfortunately engaged with the Court, bore at one Time so alarming a Tendency, that I believe every Member of the Board foreboded the most dangerous Consequences to the Peace and Resources of this Government from them. They are at present composed; but we cannot be certain that the Calm will last beyond the actual Vacation, since the same Grounds and Materials of Disunion subsist, and the Revival of it, at a Time like this, added to our other Troubles, might, if carried to Extremities, prove fatal.

" The Proposition which I have submitted to the Board may, nor have I Doubt that it will, prove an Instrument of Conciliation with the Court; and it will preclude the Necessity of assuming a Jurisdiction over Persons, exempted by our Construction of the Act of Parliament from it; it will facilitate and give Vigour to the Course of Justice; it will lessen the Cares of the Board, and add to their Leisure, for Occupations more urgent, and better suited to the Genius and Principles of Government; nor will it be any Accession of Power to the Court, where that Portion of Authority which is proposed to be given, is given only to a single Man of the Court, and may be revoked whenever the Board shall think it proper to resume it."

## A P P E N D I X, N° 3.

*Sir Eyre Coote's Minute in Consultation, 24th October 1780.*

" As the determining upon Points relative to Law Proceedings, has fallen so little within the Limits of my Profession, I acknowledge myself inadequate to the forming a thorough Judgment concerning the Plan proposed by the Governor General.

" But, trusting to his full Knowledge of that Branch of Government which he now means to bring under the Controul of Inspection, and from a real Sense of the Abilities of the Chief Justice to render any Department of Superintendence which should be intrusted to his Charge, no less useful and beneficial in Effect than in Idea, I give my Assent to the Measure:—Observing at the same Time, however, that this Assent is for the Trial of an Expedient, which may be attended with favourable Consequences, and not for its absolute Establishment; and therefore reserve to myself full Liberty to vote against the present Resolution, should I find it prove hereafter, in any Respect, detrimental either to the Lines of Government, or to the Community."

*Mr. Wheeler's Minute, 24th October 1780.*

" No one can be more sincerely desirous than I am, of the due Administration of Justice in this Country. By the late Act of Parliament, this Branch is divided between the Supreme Court and the Government; what the Act hath not committed to the former, it confirms to the latter; and wherever the Extent of the respective Jurisdictions is not clearly defined, or is oppositely viewed, their mutual Candour and Regard to the Public Good should influence.—Through these Channels only can Justice flow here.

" This Board, in the late Institution of Dewanee Courts of Adaulut, hath thought itself acting in the Province left to it by the Legislature, and making an effective Regulation for the Benefit of the Country.—I am sorry to find, from the Governor General's Minute, that he now sees the Institution in a different Light in both these Respects.—He conceives, that the Superiors of the Adauluts have no legal Powers, except such as are implied in very doubtful Constructions of the Act of Parliament; that the Court of Appeals established to controul their Proceedings, and support their Authority, can never prove effectual for these Purposes.—If the Institution has really these Evils in it, I am willing to deliberate upon proper Remedies for them to reduce it, if it has exceeded the due Limits; or if it is found to be essentially defective, to agree to an essential Change in it; but at present, I must confess, these Positions are not evident to me; and supposing these to be established in the Application of Remedies, we can have no Standard, but the Lines marked out by the Act of Parliament, which assigns a separate Jurisdiction to each of the Two Departments, or implies the Duty of a Co-operation of both?

" Although I entertain all due Deference for the Chief Justice, and feel myself embarrassed by the Personality which mixes in the Question before us; yet I must beg Leave to say, that the Expedient proposed by the Governor General, seems not to fall in with any of the Intentions of the Act, but to be opposed by Difficulties, as well as to threaten Consequences, which, unless obviated, must determine me to withhold my Assent to it.

" Some of the present Difficulties are these: First, If the Governor General and Council have no legal Power to appoint Superintendents of the Adauluts, than what is implied from a doubtful Construction of the Act of Parliament, then they should not have proceeded to an Establishment of such Importance, nor should they now persist in it; their Business in such Case is to act in concert with the Court.

2d, " If they have not in themselves competent Power for this Establishment, they, in like Manner, are not competent to confer upon any Individual, that Authority with which it is now proposed to invest the Chief Justice.

3d, " Unless the Chief Justice acknowledges the Validity of the Board's Institution (which will be a great Authority against the Governor General's Arguments) he cannot consistently accept of the Office proposed for him; and the same Remark may be extended to the Opinions of the other Judges.—His Acceptance of an Office cannot establish the Legality of the Power that confers it.

4th, " The Union of different Powers in the Person of the Chief Justice, can be no regular Conciliation of the Two Departments: The Interposition of his Person may indeed prevent their clashing for a Time; but this affects no real Adjustment of Principles between them; and it does not seem allowable for us to conclude, that a particular Distinction shewn the Chief Justice, will suppress all Opposition of Sentiment from the other Judges; nor does this Mode of procuring Peace,

61

## A P P E N D I X, N° 3.

if it should succeed, appear the most honourable or safe for ourselves; for, after delegating so much Power, both Departments are still left exposed at the Pleasure of the Chief Justice, to the future Eruption of their unextinguished Differences.

5th, "If, for the Purposes of conciliating the Court, and giving Efficacy to the Adauluts, such an Authority is to be bestowed, it would seem that these Purposes would be better answered, and all Danger of infringing the Act of Parliament avoided, by delegating the Power of hearing Appeals to all the Judges of the Supreme Court, or associating them with ourselves, and holding such Power in Conjunction with them, which falls in with one Part of the Bill transmitted to the Court of Directors in the Year 1776.

6th, "By a Appointment of this Nature, the Independency of both Departments may be endangered; by separating the Members from their Departments, a System of mutual Influences, which may occasionally operate too powerfully upon each, is at once founded.

7th, "Such a Union of different Powers is beyond the Scope of the Act of Parliament, and foreign to the Constitution of the Company's Government—A great Salary, high Rank and Consideration, are annexed to the Office of Chief Justice, most probably upon the Supposition, that the Person advanced to it could here receive no Augmentation in any of these Things; and it seems inconsistent with his Appointment from the King, which makes him independent, to accept of another Appointment under the Company, during the Pleasure of this Board.

8th, "In the Office proposed to be given to the Chief Justice, it does not appear how he can be held under Controul or Responsibility. He cannot be separated from the Privileges of his original Office; yet the Exercise of them, in all that relates to the new Appointment, must be quite discretionary with him.

"The Apprehensions which I entertain, and have alluded to in the former Part of my Minute, are these:

1st, "That it will be thought requisite, if this Appointment takes place, to annex a large Salary to it, and an ample Establishment.

"In our present State, when we can hardly raise Money for our necessary Occasions, I should think such an Expence utterly inadmissible.

2d, "Decisions might probably go upon the Principles of English Law—The Introduction of this Practice should, in my humble Opinion, be previously and maturely considered.

3d, "If Attorneys and Solicitors should be admitted to practise in the Court of Appeals, a new and wide Door of Litigation would be opened—The Company have no Controul over Attorneys and Solicitors.

4th, "The Business of the Court of Appeals must give Opportunity for a thorough Inspection of all the Affairs of the Revenue, and Proceedings of the Provincial Councils; of course, a very powerful Influence over both Europeans and Natives.

5th, "Such an Influence, possessed by the Chief Justice of the Supreme Court, might too much hide the Government from the Eye of the Natives.

"Waving further Objection, I now repeat my Wish to see these obviated; and whatever may be wanting for an effectual Controul over the Country Courts, supplied. If the Service should indeed require an extraneous Check, delicate and important as this Point is, I would by no Means have it understood that I would oppose it; but before this is applied, I think several other Expedients might be tried: 1st. The Company's chief Law Officer here, seems to be the Person to whom Recourse should first be had, his Station being similar to that of the Counsel in England, who attends on all Questions of Law, and gives his Opinion and Advice: I think, that by introducing in the same Manner the Advocate General in the Court of Appeals, the Business of that Court might be made easy to the Members of the Board; and I must think also, that if such an Officer as Judge of Appeals should be created, he has the most natural Right to it.

2d, "The Supreme Court, and the Governor General and Council, might sit together as a Court of Appeals, according to the Principle of the Bill already mentioned.

3d, "The Objections against the Chief Justice lie with less Force against either of the inferior Judges. And,

4th, "Least of all against the Presidence of all the Judges in Rotation."

## A P P E N D I X, N<sup>o</sup> 3.

*Mr. Francis's Minute, 24th October 1780.*

" I have not had sufficient Time to give this important Proposition all the Consideration it deserves; the Reflections which it suggests, must be stated hastily as they occur. That it is a fresh Innovation, succeeding many others, in the Administration of Justice to the Natives of this Country, is of itself a weighty Objection; all Innovations of this Nature are dangerous, especially in a Country, whose Government cannot divide or surrender any of its Powers, without lessening the Respect, and hazarding the Obedience, of its Subjects. On this Principle we contended for the exclusive Jurisdiction of the Governor General and Council, as Dewan over the Zemindars, Landholders, and landed Property of this Country. In my Judgment, the Proposition amounts to a direct Contradiction or Desertion of every Thing we said or did, in the Case of the Rajah of Cossijurah; as such it will be naturally received and understood by the Natives: They cannot distinguish between the Chief Justice and the Supreme Court; or if the Distinction could possibly be explained to them, and if they could be satisfied that in fact it was not intended to reinstate the Court in the Exercise of the Jurisdiction which it had claimed, and which we had resisted, it is probable they would think that some greater Evil was to befall them. I hope it is unnecessary for me to say, that no Idea of personal Disrespect to the Chief Justice can be intended by any thing I shall offer on the public Question before me; if any Expression that may appear to have such a Tendency, should escape me, I disclaim it. I mean to examine the proposed Institution on its own Merits, and the Difficulties it may be subject to as a Public Measure, without Reference to the personal Character or Qualifications of any Individual. I shall follow the Reasoning of the Governor General's Minute, in the Order in which he has placed it.

" If the Institution of the new Court has already given Occasion to Competitions between the Provincial Councils and the Dewanee Adauluts; it is our Business and Duty to put an End to them by our Authority, which is direct and sufficiently coercive over both Parties; we ought to draw the Line between them, and insist on their respective Submission to the Limitation described by it. I do not think, that to effect this Point would require any very laborious Application on our Part; our Administration wants Vigour, not Time, to execute its Duties: One Punishment would have more Effect than a Thousand Regulations. But if the Argument were well founded, how is the Difficulty removed by transferring this laborious Service to the Chief Justice, who is already so overloaded with the Business of the Supreme Court, that he finds it impossible to assist his Brethren as Acting Justices of Calcutta, and therefore is very justly excused from sharing with them in the Toil of that troublesome Office?

" The Sudder Dewanee Adaulut, I know, has been commonly, but I do not think it is erroneously, understood to be simply a Court of Appeals. The 6th Article of the Plan for the Administration of Justice, provides, *That the Dewanee Sudder Adaulut shall receive and determine Appeals from the Provincial Dewanee Adauluts;* and it says no more: If its Province be, and necessarily must be, *much more extensive*, the Extent of it should be accurately described and defined. For my own Part, I know not where to look for their necessary Definition; but I know, that a Jurisdiction not so defined, either has no Power at all, or it is despotic. A Court of Appeal, as such, can do nothing but receive Appeals from the Decrees of inferior Courts: If it is to receive and revise all the Proceedings of such Courts, it must itself cease to be a Court of Appeal; for what Suitor will appeal to a superior Court, which has already revised, approved, and confirmed the very Proceedings by which he thinks himself injured? If a Court of Appeal adheres to the true Principle of its Institution, it should know nothing of the Proceedings of the Inferior Court, until an Appeal from the Decree of that Court comes regularly before it. If it has *already* approved of the Proceedings below, it is instantly a Party, and cannot be Judge. As to the other Duties proposed, of attending to their Conduct, of remedying their Defects, and forming new Regulations, &c. these are Objects of the Legislative Power of the Country, which I understand *quoad hoc*, at least, is exclusively and unalienably vested in the Governor General and Council.

" I am of Opinion, that the Office might be exercised by the Board, or by any Two Members of it; and that Two or Three specific Days allotted in a Month to this Duty, would be sufficient to perform it.

" I must object to the Request proposed to be made to the Chief Justice, for the following Reasons: The Governor General and Council cannot, without departing from the Principle on which they have unanimously acted, establish the Sudder Adaulut on any Plan which commits the Company's Rights, or ours in the Quality of Dewan of the Provinces, to the Custody of all or any of the Judges. The Supreme Court and Council differ widely in their Ideas of the Jurisdiction of the Court. The Chief Justice cannot be supposed to have changed the Opinions which he has at all Times so steadily maintained, and those Opinions would lead him to submit to the Jurisdiction in many Instances, in which the Council, upon *their* Principles, would resist them. Thus the Council, by making the Chief Justice Judge of the Sudder Adaulut, would put into the Power of the very Man with whom they have been contending, to give up what they hitherto insisted on as their essential Rights.

## A P P E N D I X, N° 3.

" The great Object of this Plan is to give Authority to the Dewanee Adauluts; but I cannot admit, that the Means are likely to answer the End. The Arguments drawn from the elevated Station of the Chief Justice, have no Weight; he can carry none of the Powers of the Supreme Court into the Sudder Adaulut. When he acts under the Appointment of the Council, as Superintendent, he will possess no Part of the Authority which he derives from the King's Appointment of Chief Justice. It will not prove an Instrument of Conciliation, nor prevent the Revival of Disputes which, it is said, might prove fatal. It is admitted by the Governor, that the Grounds of Division still subsist; and it is certain that the Appointment of the Chief Justice to the Sudder Adaulut, will make no Alteration in the Authority and Powers of the Supreme Court; the remaining Judges will have the same Powers which they all now possess, because the Council cannot, by new modelling the Adauluts, abridge, or in any way affect the Powers of the Court. If the Chief Justice carries his late Opinions into the Sudder Adaulut, the Supreme Court will obtain Strength from this Appointment; if he acts on new Principles, more conformable to those of the Council, that will raise fresh Difficulties; it will tend to make a Breach between him and the other Judges, but can never repair the Breach already subsisting between the Court and Council. I use the Language which has already been applied by us to the Judges, when I say, that there is a Jealousy which all Men feel for their own Power and Consequence; the Two Puisne Judges cannot but feel themselves wounded by this partial Selection of the Chief Justice, and the Preference given to his superior Qualifications. We ought not to offer them such Cause of Offence, nor ought we to be careless of the Effects it may produce.

" I conceive, that the Appointment of the Chief Justice to this Office, would clash and be inconsistent with the Duties of his present Station. It would be an insuperable Bar to his acting in many Cases, in which his Duty, as Chief Justice, would call on him to act. Suppose a Suitor in the Adaulut should think the Judge had acted illegally, he might bring his Action against him in the Supreme Court, and then, upon the Principles on which the Court and the Chief Justice have particularly insisted and acted, he would be obliged to come as a Party into the Court, in which he ought to preside as Chief Justice, to plead in the usual Form, and to defend himself in the usual Way; and he might be compelled to pay Damages for what he had done as Superintendent, in the same Manner that the Council of Patna were for their Proceedings against Nadara Begum. Thus his Proceedings in the Adaulut would bring him a Party into his own Court, and preclude him from acting in his Capacity of Chief Justice. Again, suppose a Person committed by any of the inferior Adauluts, or by the Chief Justice of the Sudder Adaulut, should apply to him for a Writ of Habeas Corpus, should he refuse the Writ, because the Grounds of the Commitment are already known to him? Or shall he grant it, though possessed of such Knowledge, and when he himself has prejudged the Question, by ordering or approving the Commitment?—I cannot presume to say how far it would be his Duty to grant the Writ at all Events, but it is evident that the Prisoner would gain nothing by obtaining it. It may be said, the Person so committed may apply for a Writ of Habeas Corpus to one of the Puisne Judges; if he succeeds (as he certainly would, if, in my Opinion of the Judge, there should seem Reason to suppose the Commitment might be illegal) it would follow, that the Act of the Superintendent would be canvassed, and perhaps set aside by an inferior Judge of another Court, in which the Superintendent himself presides. This Case might frequently occur, and if it should ever occur, it would tend to create new Differences between the Supreme Court on the one Side, and the Sudder Dewanee Adaulut, supported by the Chief of the Supreme Court, on the other.

" On the whole, I think it would be improper in the Council to request the Chief Justice to take upon himself, and perhaps illegal in him to accept, an Office, which is so inconsistent with the Duties of his present Station, and which would preclude him from exercising the Trust reposed in him by the King, in many Cases of the greatest Importance, particularly those in which the Limits of Jurisdiction of the Court, and the Extent of the Powers vested in the Council, might come in Question.

One of the Observations with which the Governor General concludes his Argument in favour of his Plan, viz.—That the Portion of Authority which is proposed to be given, is only to a single Man of the Court,—appears to me a strong Objection against it. The English Government has very sparingly delegated judicial Authority to single Persons; final Appeals in particular are never permitted to be tried by a single Judge, either in England or any of its Provinces or Dependencies. The King is, I believe, the only single Person to whom such an appellate Jurisdiction is even nominally given, and he cannot try an Appeal without the Assistance of his Privy Council: Appeals to him, therefore, are called Appeals to the King in Council.

" This Policy has nothing to do with Trials by Jury, or Principles of English Liberty, which may be thought inapplicable in Bengal, but is founded on that Justice, to which the Natives of Bengal are entitled, as well as other Men. But Justice requires, in the Constitution of a Court, Corruption be above all Things guarded against; and no Magistrate is more liable to Corruption than a Judge, in whom is vested a Power of determining Appeals, without being either checked by Associates, or controlled by any further Appeals to superior Judges. The Legislature, in establishing the Superior Court of Judicature here, (though it be not a Court of Appeal, and though an Appeal

## A P P E N D I X, N° 3.

Appeal may be made from its Decisions to the King in Council) thought a Plurality of Judges necessary, and therefore created so many, that it is not likely they should be reduced by Chance to one.—Mr. Hastings and his Council, when they erected the Court of Sudder Dewanee Adaulut, would not leave such Reduction in the Power of Chance, but made the Presence of Three Members essentially necessary to a Decision. If I could believe it lawful and proper for us to delegate our Judicial Authority to Judges of the Supreme Court, I should think it ought rather to be given to all than to one. If all the Powers of the Sudder Dewanee Adaulut be vested in one Man, yet so vested, "that they may be revoked whenever this Board shall think it proper to resume them;" such a Judge may become, in the Hands of a corrupt Council, an Instrument of Oppression. The Council will not be answerable for his Decrees, and he will be in a great Measure protected by his judicial Capacity. The Authority given may undoubtedly be revoked, whenever the Board shall think proper to resume it. The present Board cannot bind their Successors, nor even themselves, against a Change of Opinions.—But will the Chief Justice accept of such an Office on so precarious a Footing? Or would it be respectful in us to offer it to him, with the Information which ought to accompany it, viz. That he is removable at any Time by a Resolution of the Board?"

*Resolution, 24th October 1780.*

"Resolved, That the Chief Justice be requested to accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such other as the Board shall think proper to add to them, or to substitute in their stead; and that on his Acceptance of it, he be appointed to it, and styled The Judge of the Sudder Dewanee Adaulut."

The Chief Justice accepted the Appointment; and thereupon it was agreed, that conformably to the Resolution of the Board, that the Chief Justice be appointed Judge of the Sudder Dewanee Adaulut, and that Notice of his Appointment should be sent to the Superintendents of the several Dewanee Adauluts, and that the Provincial Councils should be advised thereof.

*Minute about Salary, same Day.*

"The Governor General recommends, that a Salary of 5000 Sicca Rupees, and 600 Sicca Rupees per Month for the Rent of an Office, may be allowed to the Chief Justice for this Appointment; and that the Motion do lie for the Consideration of the Board, to be decided on at their next Meeting. Agreed, that it do lie accordingly."

The Company's Advices do not inform them what has been done upon this last Motion; but it is not doubted, that a considerable Salary has been annexed to the Office of Judge of the Adaulut.

3d November, 1780, the Governor General and Council passed several additional Regulations, respecting the Administration of Justice in the Provinces; of which you have a Copy herewith.

The Court of Directors request, that you will consider the Act of Parliament of 13 Geo. III. Cap. 64, and the several Minutes and Arguments of the Governor General and Council, upon the Occasion of appointing the Chief Justice to be Judge of the Court of Sudder Dewanee Adaulut; and upon the Whole to advise them,

Q. Whether the Appointment of the Chief Justice, to be Judge of the Sudder Dewanee Adaulut, and giving him a Salary for that Office, besides the Salary he is entitled to as Chief Justice, was illegal, either as being contrary to the said Act of 13 Geo. II. Cap. 64; or incompatible with his Duty, as Chief Justice of the Supreme Court? And whether, he may be continued Judge of the Sudder Dewanee Adaulut, consistent with the Act of 21st George III. Cap. 70. Sec. 21?

The Appointment of the Chief Justice, to the Office of Judge of the Sudder Dewanee Adaulut, and giving him a Salary for the latter Office, besides what he is entitled to as Chief Justice, does not appear to us to be illegal, either as being contrary to the 13 G. III. or incompatible with his Duty, as Chief Justice; nor do we see any Thing in the late Act, 21 Geo. III. which affects this Question.

Lincoln's Inn,  
19 December 1781.

J. Dunning.

Ja. Wallace.  
J. Mansfield.

## A P P E N D I X, N° 3.

### *Mr. Rous's Opinion.*

That Sir Elijah Impey, by his Talents, his general Knowledge of Jurisprudence, and by the Habits of his Life, is well qualified in the Character of Judge of the Sudder Dewanee Adaulut, to improve the Order of judicial Proceedings, and to correct the Errors of inferior Courts of Adaulut throughout the Provinces, cannot reasonably be doubted.

On the other Hand, if by making this Office an Instrument of Conciliation with the Supreme Court, in the Language of the Governor General's Minute, to influence the Opinions of the Chief Justice, be intended; it can as little be doubted, that an Appointment of great Power and considerable Emolument, made with such a View, would be a direct Attempt to corrupt him in the Character of Chief Justice. I chuse therefore, to consider the Question, divested of all adventitious Circumstances, arising from the Qualifications of the Man, and the immediate Occasion of this Nomination.

In this general View of the Subject, the Appointment of the Chief Justice to be Judge of the Sudder Dewanee Adaulut, with a Salary at the Pleasure of the Council, appears to me inconsistent with the Object and Intention of the Legislature, in creating a Supreme Court of Judicature. By the Act of the 13th of the present King, the whole Civil and Military Government of the Country is conferred upon the Governor General and Council, "in like Manner, to all Intents and Purposes whatsoever, as the same now are, or at any Time heretofore might have been exercised by the President and Council, or Select Committee, in the said Kingdoms;" the President and Council had succeeded to the Power exercised by the Soubadhar, who certainly acted as a despotic Sovereign.—The Legislature therefore, by this Reference, have expressly declared their Intention to establish an undefined Power in the Council. Perhaps to limit this Authority by previous Laws, would be found, in the present State of Bengal, altogether impracticable.

It is sufficient to observe, that such a direct Controul has not been attempted; but, for the Purpose of preventing the Power necessary to the Government of the Country, being abused to the Emolument of Individuals, all those employed in the several Departments of Government under the Governor General and Council, are subjected to the Jurisdiction of a Supreme Court of Judicature. Their public Acts are protected by the Authority derived from the Council; as Individuals, the Europeans at least, are subjected to the Jurisdiction of the Court. Even (as the Power of the Supreme Court is explained by the Act of the last Session) those employed in the Management of the Revenues, and Judges administering Justice in the Courts of Adaulut, are liable to be punished in the Supreme Court for Extortion, or other Crimes committed in their public Character. To render the Restraint effectual, this Supreme Court of Judicature is established independent of any Power in the Country; the Judges are nominated by the Crown; and that their Minds may not be influenced by Hope or Fear, large Salaries are annexed to the Office by Parliament, which are declared to be in Lieu of all Emoluments whatsoever, with negative Words, excluding every other Emolument "in any Manner, or on any Account or Pretence whatsoever," than such Salaries and Allowances as by the Act are directed to be paid. Another Clause is added, prohibiting the Acceptance from any "Person or Persons, in any Manner, or on any Account whatsoever, of any Gift, Donation, Gratuity, or Reward," in as large and ample Terms as the English Language can furnish. General as these Prohibitions are, I do not think they can be construed to extend beyond the Intention of preserving the Parties independent: The Governor, therefore, or either of the Four Counsellors, may accept additional Emoluments from the Company; because, in the Formation of their Office, they are created dependent on the Company, and expressly directed to obey their Orders. For the same Reason, the Judges may receive additional Salaries from the Crown, because they are removable by the Crown; and there appears no Intention to guard their Independence from that Quarter: But I cannot persuade myself, that the Exception can be extended to the Chief Justice, and either (and consequently to all) of the Judges accepting Offices of great Power and large Emoluments, during the Pleasure of the Company, who, together with all Persons directly or indirectly in their Service, are amenable to the Supreme Court; or during the Pleasure of the Council, who are intrusted with those Powers, the Abuse of which the Supreme Court was instituted to repress. If the Judges may accept from the Council, it seems to follow, that the Members of the Council, the Judges, and all Persons in Civil or Military Employments under the Crown, or the Company, may accept Offices with Jaghires, or Salaries, from the Indian Princes; for the general Prohibition of accepting from Persons of this Description, in the subsequent Clause, is expressed in the same Terms as the preceding, with this sole Distinction, that the Clause respecting the Judges and Council alone prohibits the Acceptance from any Persons whatsoever. I am therefore of Opinion, that the Appointment is illegal, as contrary to the Intention of the Act of the 13th George III. and subversive of the Object of the Legislature, in the Institution of a Supreme Court. I cannot forbear to add, that the Example of a Chief Justice, one Day summoning the Governor General and Council before his Tribunal, for Acts done as Council, and the next, accepting Emoluments nearly equal to his original Appointment, to be held during the Pleasure of the

## A P P E N D I X, N° 3, 4.

same Council, is in itself pernicious ; and should this Appointment be confirmed, Opposition right or wrong, to Government on the Seat of Justice, may become a sure Road to Preferment, and we may see future Judges leading Examples of that Corruption, which they were intended to punish and prevent.

Geo. Rous.

Inner Temple,  
Dec<sup>r</sup> 20th 1781.

Temple, Dec. 22, 1781.

The Solicitor General presents his Compliments to Mr. Smith ; and having considered further the Question relating to the late Appointment of Sir Elijah Impey, since he subscribed an Opinion upon it, he incloses to Mr. Smith his present Ideas upon the Subject, which he wishes to be laid before those, to whom his former Opinion is communicated.

Since I gave my Opinion upon the Question relating to the Appointment of Sir Elijah Impey to the Office of Judge of the Court of Sudder Dewanee Adaulut, great Doubts have occurred to me upon that Question ; and although there is no particular Provision in the Statute of 13th George III. Cap. 63. which seems to have been intended to prohibit any of the Judges of the Supreme Court from accepting such an Office ; yet it is by no Means clear to me, that the Acceptance of such an Office, with a Salary or other Profit annexed to it, is not forbidden or rendered illegal by that Law. The great Object of that Law was, to erect a Court of Judicature, which might more effectually controul the British Subjects within its Jurisdiction, than any former Judicature had done. The Judges who composed it, were to be named by the King ; and their Salaries are fixed by the Statute. They do not, in any Respect, depend on the India Company, except that the Company are to pay their Salaries. To give Effect to this Court of Judicature, it seems to be necessary that the Judges should be, as far as possible, independent of the Servants of the Company. I therefore doubt, whether the Acceptance of such an Office, with a Salary, especially to be held at the Pleasure of the Governor and Council, is not contrary to the Spirit and principal Intention of the Statute. If it be so, it may perhaps not be thought a great Stretch of Construction, to consider the Acceptance of such an Office and Salary, as forbidden by that Part of the 23d Section, which prohibits the Judges to accept any Reward, &c. ; but my Doubts would have been the same, from the general Principle and Object of the Statute, if the Words of that Section could not be supposed to extend to this Case. I have not been able to get the better of these Doubts, although I have been very desirous of doing it, from the great Respect I have for the Opinions of those Gentlemen, with whom I lately concurred ; and whose Judgment ought to have much more Weight and Authority than mine.

J. Mansfield.

Temple, Dec. 22, 1781.

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## A P P E N D I X, N° 4.

*Extract of a Letter from the Governor General and Council in Bengal, in their Revenue Department, to the Court of Directors of the East India Company, the 25th of November 1780.*

Con<sup>n</sup>.  
28th March,  
1st April.

12th. THE several important Changes which have taken Place in the Constitution and Civil Government of these Provinces, since the Period when the late President and Council adopted their Plan for the Administration of Justice, which Changes had not hitherto been provided for, in any general and uniform System, have induced us, after the most mature and attentive Consideration of the State of this Country, with Respect to its present Circumstances, and the Manners and Customs of its Inhabitants, to establish a general Plan and Set of Regulations, for the more effectual and regular Administration of Justice in the Country Civil Courts of these Provinces.

13th. By this Plan, Courts of Civil Judicature are continued in each of the Grand Divisions of Calcutta, Moorshedabad, Burdwan, Dacca, Purnea, and Patna ; over each of which Courts, a Company's covenanted Servant is appointed to preside, under the Title of Superintendent or Judge of Dewanee

## A P P E N D I X, N<sup>o</sup>. 4.

Dewanee Adaulut, whose Jurisdiction is separate from, and independent of, the Provincial Councils.

14th. Care has been taken to distinguish and discriminate the particular Object of the Jurisdiction of the Provincial Councils, and those of the Superintendents of Adaulut; leaving with the former, exclusive Jurisdiction in all Matters which directly concern the Revenue, and some which may more distantly affect the Collection of it; but all Cases of Meum and Tuum, all Successions to Zemindaries, and other inheritable Lands, and Disputes of personal Property and personal Rights, on which Application may be made to them, are to be referred to the Decision of the Superintendent of Adaulut, in whom this Authority has been vested; intending, that the Time and Attention of the late Provincial Councils shall not be taken up in hearing and determining Matters of a judicial Nature, except in Cases which arise out of, or concern the Collection of, the Public Revenues; which will relieve them from a great Degree of Labour and Responsibility, and enable them to prosecute, with more Effect, the other Duties of their Station—the keeping up the Collection of the Revenues under their Charge, and preventing Oppression, by a speedy Adjustment of all Disputes and Differences which may arise in Consequence.

15th. We have in like Manner been careful to restrain the Authority of the Superintendent of Adaulut, in such particular Cases as might interfere with, or obstruct the Collection of, the Revenues; but in all Cases where the Superintendent may have Occasion to apply to the Provincial Councils for their Assistance, we have directed them to afford it to the utmost of their Power, as far as the particular Circumstances of the Case will admit; and, in general, to consider the Spirit as well as the Letter of our Regulations, and endeavour to conform thereto, by co-operating with the Superintendent, and promoting, as far as may depend on them, the Administration of Justice, in the respective Divisions under their Authority.

16th. For the several Rules and Ordinances contained in the Plan, and for the Oath administered to each Superintendent before he was invested in his Office, we beg Leave to refer you to the Proceedings noted in the Margin, in which the Plan itself is recorded: We also transmit a Copy of it, a separate Number in the Packet.

Conf'd. 28th  
March.

17th. The Superintendents have been allowed a Salary of One thousand Sicca Rupees, and Three hundred Sicca Rupees each per Month for House Rent, in lieu of all Contingencies; the Amount of which, together with that of their Establishments of Officers and Servants, will, we hope, be in a great Measure defrayed by the Fees or Commission which the Regulations direct to be levied, at specific Rates, on the Process and Decision of all Causes, of which they may take Cognizance.

18th. The inferior Dewanee Courts being, by their Constitution, all made amenable to a superior Court, called the Sudder Dewanee Adaulut, or Court of Repeal and Revision, the Duties of which the Board had hitherto reserved to be executed by itself, though it had not held any immediate Proceedings in Consequence; the Governor General, to whose Minute on the Subject we beg to refer you for the Grounds of the Motion which followed it, proposed, That the Chief Justice should be requested to accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such others as the Board should think proper to add to them, or to substitute in their stead; and that on his Acceptance of it, he should be appointed to it, and styled The Judge of the Sudder Dewanee Adaulut.

Conf'd.  
29th Sept.

19th. The Governor General's Motion being resolved in the Affirmative; and the Offer made in Consequence to the Chief Justice, he accepted of the Office; and has been appointed to it accordingly.

Conf'd.  
24th Oct.

20th. For our separate Opinions on this Subject, and for some additional Regulations which have been proposed for the Chief Justice, since his Appointment, and confirmed by us for the Sudder and inferior Dewanee Adauluts, we request your Reference to the Proceedings noted in the Margin; Copies of which Minutes and Regulations are also transmitted Numbers in the Packet.

24th Oct.  
3d Nov.

*Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 28th March 1780.*

As several important Changes have taken place in the Constitution and Civil Government of these Provinces, since the Period when the late President and Council adopted their Plan for the Administration of Justice; and as these Changes have not hitherto been provided for in any general and uniform System, the Governor General and Council therefore, after maturely and attentively considering the State of this Country, with respect to its present Circumstances, and the Manners and Customs of its Inhabitants, have resolved, That the following general Plan and Regulations shall now be established, for the more effectual and regular Administration of Justice in the Country Civil Courts of these Provinces.

## A P P E N D I X, N° 4.

1st. That there shall continue to be Courts of Civil Judicature in each of the grand Divisions of Calcutta, Moorshedabad, Burdwan, Dacca, Purnea, and Patna; and that over each of these Courts, a Company's covenanted Servant shall preside, under the Title of Superintendent of Dewanee Adaulut.

2d. That the Superintendent of each Dewanee Adaulut shall be appointed by the Governor General and Council, and that his Jurisdiction shall be separate from, and independent of, the Provincial Councils.

3d. That the Provincial Councils already established, shall continue to try and decide, in the same Manner as they have hitherto been allowed to practise, on all Causes which have an immediate Relation to the Public Revenue; such as Demands of Government on Zemindars, Talookdars, Chowdries, Farmers, Muthaaheds, Woodadars, Securities, Aumils, Tasseeldars, Etmaudars, Shaikdars, or others employed in the Collections, or any ways responsible for the Revenues immediately under the Provincial Councils; Demands of Zemindars, Talookdars, Chowdries, Farmers, Muthaaheds, Woodadars, Securities, Aumils, Tasseeldars, Etmaudars, Shaikdars, &c. on their under Farmers, Malzamins, inferior Landholders and Collectors, or others from whom Rents or Revenues are immediately due to them; and, in short, all Demands for Rents or Revenues of Persons employed in the Collection of them, either officially or hereditary, in the different Gradations downwards, from Government to the Ryots, or immediate Occupants of the Soil. And again, in the same Manner, all Complaints of Ryots and Persons of any of the other above-mentioned Denominations, against the Persons to whom they pay Revenue in the different Gradations upwards, for irregular and undue Exactions, and in general, for all Oppressions which do not fall under the Cognizance of the Fouzdarry Courts. The Provincial Councils shall further try and decide all Disputes relative to Boundaries, except within the Town of Calcutta and Limits of Punchanum Gung, or 55 Dhees, which are to be reserved to the Superintendent of the Calcutta Adaulut, as being likely to take up too much of the Time and Attention of the Provincial Council, from the Number and Intricacy of the Suits which may be expected to arise about the Bounds and Limits of landed Property; and also all Claims for Money lent to Zemindars, Talookdars, and Chowdries, for the Payment of the Revenue.

4th. That all Causes of Inheritance to Zemindarries, Talookdarries, Chowdrabies, or other real Property; all Mercantile Disputes, all Matters of Personal Property, all Disputes about the Bounds and Limits of landed Property within the Town of Calcutta and Limits of Punchanum Gung, or 55 Dhees; and in short, all other Causes of a Civil Nature, not described in the Third Article of these Regulations, shall be subject to the Jurisdiction of the Superintendent of the Court of Dewanee Adaulut.

5th. That the Superintendent of the Dewanee Adaulut shall hold his Courts Three Times in every Week, and as frequently as Occasion may require; but that no Cause shall be heard or determined, except in open Court, and in the Presence of some of the principal Officers.

6th. That the Process observed for trying Causes in the Provincial Dewanee Adaulut, shall be as follows:

First, To file and read the Petition of the Complainant.

Secondly, To summon the Defendant, and require Security from him to answer the Plaintiff, which, if he does not give, the Superintendent may either confine him by Peons, or otherwise, at his Discretion; to allot a limited Time for the Defendant to give Answer, which, when received, shall also be filed and read.

Thirdly, To hear the Parties, vivâ voce, and if necessary, examine Evidences: And

Lastly, To pass Decree,

That if in adhering to this Order of Process, the Defendant shall evade or delay giving Answer within the limited Time, the Court shall proceed to hear and try the Cause, ex parte; and to give Judgment according to the Evidence before them.

7th. The Petition or Plaintiff being the Foundation of the Cause, must be an authentic Document, and signed or sealed by the Plaintiff, or his authorized Vacqueel, and contain a particular State of the Case. No Plaintiff to be registered, except in this Form, and delivered either by the Plaintiff in Person, or by a Vacqueel or Vacqueels, having written Authority from him; the Name of such Vacqueel or Vacqueels to be registered; and none but authorized Vacqueels to be allowed to speak in the Cause.

The same Rules must be observed by the Defendant in his Answer, and in the Rejoinders, or Replies, which may follow. The Superintendent to summon Witnesses by Tullub, and to inflict moderate Fines, or punish by Imprisonment, for Non-attendance.

8th. That all Causes shall be brought before the Court, and the Process conducted in the Order in which the Plaints are filed, and the Evidences and Exhibits prepared.

69

## A P P E N D I X, N<sup>o</sup> 4.

9th. That complete Records shall be kept in the following Form: That at the Conclusion of every Trial, the Petition, Answer, Rejoinder, and what other Reply may follow, Evidence, Orders of Court, in the Order they are made; and lastly, the Decree or Judgment, be written on a Roll of strong Paper, and authenticated by the Seal of the Court, the Signature of the Superintendent, and countersigned by the different Officers, and delivered in this Form to the Keeper of the Records, who is to be answerable for the same. The above to be deemed a complete Record of the Trial, and Copies thereof, under the Seal of the Keeper of Records, to be given to all Persons applying to him for the same, on Payment of a certain Fee, as shall hereafter be specified; and such Copies so authenticated, to be deemed and received as Evidence in any other Court of Dewanee Adaulut, and in the Court of Appeals.—This Record to be kept in the Persian, or Bengal Language, as the Petitions and Answers, or Exhibits, are delivered; but the Orders of Court to be in Persian, and no English Petitions to be registered.

10th. That each Superintendent shall keep an Abstract Register of his Adaulut in English, containing the Names of the Plaintiff and Defendant, the Substance of the Suit, the Substance of the Decree, the Date of the Cause being filed, and the Date of the Decree being passed; and this Abstract shall be transmitted Monthly to Sudder Dewanee Adaulut.

11th. All Warrants for Parties to appear before the Dewanee Adaulut, shall issue from the Adaulut, under the Seal of the Court and the Signature of the Superintendent; but the Chief of the Provincial Council may, of his own Authority, issue his Warrant under the Seal of the Provincial Council, for apprehending any Person who he may require to answer any Charge before the Dewanee Adaulut, in Cases which he shall judge of such Urgency as to require it.

12th. All Decrees of the Adaulut shall be issued under the Seal of the Court, and signed by the Superintendent; and Copies shall be delivered by the Superintendent himself, in the public Cutcherry.

13th. The Superintendent of the Adaulut, shall issue his Summons under the Seal. He shall not summon the Mofussil Farmers, or Zemindars, or Persons employed in the Collections immediately under the Provincial Council; but he may order their Vacqueels to appear, and in Case of their not sending Vacqueels properly authorized, he is to apply to the Chief and Provincial Council, to summon the Parties themselves, as directed in the 14th Article.

He may summon inferior Persons from the Mofussil, under the following Restrictions, viz. That he shall not send Peons, or any other Persons with Authority, into the Lands belonging to the Zemindars and Farmers, excepting only on such Occasions as shall indispensably require it, for the immediate Execution of Justice.

That on such Occasions, a Warrant, under the public Seal, and signed by the Superintendent, shall be given in Writing to the Officers employed, and be recorded in the judicial Proceedings, with the Reasons for issuing it; but that no Person be summoned on ordinary Occasions, excepting by a Tullubchitty to the Farmer, or Order, requiring him to produce the Person summoned in a certain Space of Time. That the Superintendent shall further avoid, as studiously as possible, summoning any Persons from the Mofussil, who are any Ways connected with the Revenue, during the Months of Badhoon, and Assin, and Augun, and Poos, unless in Cases which call for an immediate Enquiry.

14th. Should the Superintendent require the personal Attendance of Farmer, Zemindar, or Collector, he must make Application to the Chief or Council, who, if they judge it proper, will issue a Summons to such Farmer, or Zemindar, or Collector, under the Provincial Seal and Signature of the Chief and Dewan; but in all Cases where they think proper to decline issuing such Summons, at the Requisition of the Superintendent, they shall assign their Reasons, by Letter, to the Governor General and Council, for such Refusal.

15th. It shall be the Duty of the Superintendent to prevent the Interference of his private Servants, in any Cause depending, or intended to be brought on, before his Court, and to prevent them from having any Connection with the Parties.

16th. It shall be observed as a Rule of the Adaulut, to set down from among the Causes, in the Order in which they stand upon the File, such as are ready for hearing; and to give proper and timely Notice to the Parties, of the Day on which they will come to be heard.

17th. All Arzees, on being presented, shall be signed and numbered by the Superintendent, and copied in a Book by a Moherre or Officer of the Court; but they shall on no Account be delivered to any other Officer, but the one whose particular Duty it shall be to copy and register them.

18th. And furthermore, to prevent the Abuse of private Influence from obstructing or diverting the Course of Justice, it is hereby declared, That every Officer of the Dewanee Adaulut, or any Servant or other Dependant of the Superintendent, who shall be convicted of receiving Money, or SEL. COM. REP. I. [ E ] other

## A P P E N D I X, N° 4.

other valuable Consideration, directly or indirectly, from any Party in a Suit depending before the Adaulut, shall be punished in an exemplary Manner, either by Fine, Imprisonment, or corporal Punishment, at the Discretion of the Superintendent.

19th. That as the Litigiousness and Perverseness of the Natives of this Country, in their Suits and Complaints, are often productive not only of Inconveniences and Vexation to their Adversaries, but also of endless Expence, and actual Oppression; it is to be observed as a Standing Rule, that Complaints of so old Date as Twelve Years, shall not be actionable, unless where the Complainant can shew, by clear and positive Proof, that he had actually demanded Payment of the Sum in Question, or otherwise directly preferred his Claim for the Matter in Dispute, within that Period, and prove to the Satisfaction of the Superintendent, that either from Minority, or other good and sufficient Cause, he had been precluded from the Means of procuring Redress; in which Cases the Superintendent of the Adaulut, seeing good Causes, is to admit the Suit.

20th. That if the Parties should be found guilty, as is often the Case, from Litigiousness and Perverseness, of flying from one Court to another, in order to prevent and protract the Course of Justice, the Party so transgressing shall be considered as Nonsuited; and according to his Degree in Life, and the Notoriety of the Offence, be liable to Fine, Imprisonment, or corporal Punishment.

21st. That as Cases may occur, in which it will be highly necessary, for the Welfare of the Crush and restrain trivial and groundless Complaints, and to deter and Intrigue, which Passions among the People often work to the undoing of their Neighbours, a Discretion shall, in such Case, be left to the Superintendent, either to impose a Fine, not exceeding Five Rupees, or inflict a corporal Punishment, not exceeding Twenty Lashes with a Rattan, according to the Degree of the Offence, and the Person's Station in Life.

22d. That Interest shall not be taken by Creditors or admitted by the Superintendent of the De-wanee Adaulut, either in Cases of past Loans, above the Rates established in the 18th Article of the former Plan for the Administration of Justice, namely on Sums not exceeding One hundred Rupees, Principal and Interest, at Rupees 3, 2, per Cent. per Mensem, or Half an Anna at the Rupee.

On Sums above One hundred Rupees Principal, an Interest of Two Rupees per Cent. per Mensem. The Principal and Interest to be discharged according to the Conditions of the Bond; and all Compound Interests arising from an intermediate Adjustment of Accounts, to be declared unlawful, and prohibited. And in Cases of future Loans, no higher Interest to be allowed than Two per Cent. per Mensem, or Twenty-four per Cent. per Annum, where the Principal shall be under One hundred Rupees; and One per Cent. per Mensem, or Twelve per Cent. per Annum, where the Principal shall exceed One hundred Rupees; and Publication of this to be made.

When a Debt is sued for upon a Bond which shall be found to specify a higher Interest than the established Rates, the Interest shall be wholly forfeited to the Debtor, and the Principal only recoverable; and that all Attempts to elude this Law, by Deductions from the original Loan, under whatever Denomination, shall be punished by a Forfeit of a Moiety of the Amount of the Bond to the Government, and the other Half to the Debtor.

It shall be further in the Discretion of the Superintendent, in Cases of past Loans, on a Review of the Circumstances of the Debt, and Condition of the Debtor, to settle the Payment of the Debt according to a known and established Custom of the Country; namely, where the Interest has accumulated so as to exceed the Principal, to reduce it to One Half of the Principal; or where the Interest has exceeded One Half of the Principal, to reduce it to a Quarter.

23d. That all Bonds shall in future be executed in the Presence of Two subscribing Witnesses; and Publication hereof made. This not however to apply to Bills of Exchange, Receipts, or Notes of Hand, in which the Custom of the Country is to be referred to and abided by.

24th. That whereas it has been too much the Practice in this Country, for Individuals to exercise a judicial Authority over their Debtors, a Practice which is not only in itself unlawful and oppressive, seeing a Man thereby becomes the Judge in his own Cause, but which is also a direct Infringement of the Prerogative and Power of the regular Government: That Publication shall therefore be made, forbidding the Exercise of all such Authority, and directing all Persons to prefer their Suits to the established Court of Adaulut; and that the Superintendent shall particularly attend to this Regulation; which, it is apprehended, will prove the Means of Relief to the helpless Ryott, from the merciless Creditor, the Money-lender. But that the Superintendent for the Relief of the poorer People, shall have the Power of referring Causes not exceeding One hundred Rupees, to Zemindars or public Officers, or Arbitrators chosen by the Parties, residing near the Spot where the Cause of Action shall have arisen; subject however to his Revisal, in Cases of flagrant Injustice or Partiality.

25th. That in all Cases of disputed Property regarding Lands, Houses, &c. where a local Investigation is required, an Aumeen shall be chosen, with the mutual Consent of the Parties, or if they cannot agree in the Choice of one Person, each shall have the Privilege of nominating his own; or if they neglect

71

### A P P E N D I X, N<sup>o</sup> 4.

neglect to do either, the Superintendent shall appoint one for them. The Superintendent shall decide on the Report of Circumstances, as delivered by the Aumeen, or on their joint Report in Case there are Two.

The Superintendent is also to attend, that the Aumeens do not accumulate Expences, by unnecessary Delays, but that their Scrutiny and their Wages be limited to the Time he judges sufficient for performing the Service in Question; the Expence of the Enquiry to be defrayed by the Person who is cast.

26th. That in all Cases of disputed Accounts, Partnership, Debts doubtful or contested, Bargains, Non-performance of Contracts, and so forth, it shall be recommended to the Parties, to submit the Decision of their Causes to Arbitration, the Award of which shall become a Decree of the Dewanee Adaulut.—The Choice of the Arbitrators is to rest with the Parties, but they are to decide the Causes without Fee or Reward.

The Superintendent on the Part of Government, is to afford every Encouragement in his Power to the Inhabitants of Character and Credit to become Arbitrators; but is not to employ any coercive Means for that Purpose.

27th. That in all Suits regarding Inheritance, Marriages, and Cast, and other religious Usages or Institutions, the Laws of the Koran with Respect to Mahomedans, and those of the Shaster with Respect to Gentoos, shall be invariably adhered to.—On all such Occasions, the Molavies, or Brahmins, shall respectively attend to expound the Law, and they shall sign the Report, and assist in passing the Decree.

28th. That the Superintendent of the Dewanee Adaulut, shall have a Right of decreeing to the Party in whose Favour Judgment is given, any specified Sum of Costs within the real Amount, or in general to decree with Costs. The Bill in both Cases to be taxed by the Superintendent.

29th. That on the Decree being passed, the Superintendent may enforce it, by ordering an Attachment of the Person of the Party who is cast, or the Sale of his Effects at Auction; or by giving to the Party who hath carried his Cause, Possession of the Property comprehended under the Decree.

That it shall however be left to the Good Will of the Parties, and finally to the Discretion of the Superintendent, in some Cases to adjust the Payment by a Kistbundee, taken from the Party who is cast.

30th. That the Decree of the Dewanee Adaulut shall be final in all Cases, for Sums not exceeding Sicca Rupees 1000, for alienated or free Lands, in which the Jumma or Annual Revenue of Government doth not exceed Rupees 100.

31st. That where the Sum or Value decreed, whether in Money, Effects, or Lands, shall exceed the above Amount, an Appeal shall lie from the Decree of the Superintendent of the Dewanee Adaulut, to the Governor General and Council in the Court of Sudder Dewanee Adaulut.

32d. That the Appeal must be made within 10 Days after the Decree, and is to be noted in the Margin of the Trial: And that, as it may be a Discouragement to the Appellant, to present his Petition of Appeal to the same Person who has decided against him in the first Instance, that all Petitions of Appeal against Decisions of the Superintendents of Adaulut, shall be presented to the Chief and Provincial Council of the respective Division, who are to transmit the same without Delay, to their Governor General and Council, in their Department of Sudder Dewanee Adaulut.

33d. That no Appeals shall be received from an Award of Arbitration, unless the Arbitrators shall have been previously tried and convicted in any Phousdarry Court, of Subornation of Witnesses, of a Collusion with the Parties, of having received any Bribe or Consideration for their Award; or unless the Witnesses, on whose Testimony the Cause in Question was decreed, shall have been previously tried and convicted in any Phousdarry Court, of having given false Evidence in the said Cause; but that all criminal Accusations, although arising from any Cause heard and decreed in the Dewanee Adaulut, are cognizable only by the Phousdarry Court.

34th. That Persons found guilty of preferring groundless, litigious, or vexatious Appeals, shall be punished, at the Discretion of the Governor General and Council, by an Enhancement of the Costs, which shall be given to the Respondent as a Compensation for the Trouble and Expense he shall have sustained.

35th. That in Cases where an Appeal is made from the Decree of the Superintendent to the Governor General and Council, the Appellant, if Defendant in the original Suit, on delivering his

## A P P E N D I X, N<sup>o</sup>. 4.

his Petition of Appeal, shall be obliged to deposit the Amount of the Decree, or give good and sufficient Security for the Payment of the Decree, in case it should afterwards be confirmed by the Governor General and Council ; the Costs to be immediately paid.

36th. That a Commission shall be taken on every Plaintiff filed at the Commencement of a Cause, in the Proportion of the Sums or Value sued for in the Bill of Plaintiff ; the Rates of Commission to be as follows ;

On all Sums not exceeding	1,000,	5 per Cent.
On all D <sup>o</sup>	D <sup>o</sup>	5,000, 4 per Cent.
On all D <sup>o</sup>	D <sup>o</sup>	10,000, 3 per Cent.
On all Sums above		10,000, 2 per Cent.

That where the Suit is for Property in Lands, the Lands shall be estimated according to their annual Produce or Jumma ; that is to say, alienated or free Lands, at Ten Times the Amount of their Annual Produce ; and Malguzary Lands, at the Amount of One Year's Jumma or Revenue of Government ; and the Commission taken on filing the Plaintiff, shall be calculated accordingly.

37th. That every Plaintiff must necessarily state the Sum or Value, and in Disputes regarding Land, the Annual Produce or Jumma, of the Subject of the Suit.

38th. That the full Commission shall be deposited by the Plaintiff, at the Time of filing the Bill of Plaintiff ; but on the Decree being passed, the Defendant shall be immediately compelled to pay the Amount of the Commission, due on the Sum against him, calculated at the same Rent or per Centage as that which was originally deposited by the Plaintiff ; and the Amount so extracted from the Defendant, shall be repaid by the Court to the Plaintiff.

39th. That in Cases of Appeal, the Appellant shall be obliged to deposit a further Commission, equal to One Half of the Sum originally deposited by the Plaintiff, which, in case the Appellant carries his Appeal, and obtains a Reversal of the Decree of the Provincial Adaulut, shall afterwards be recovered from the Respondent, and paid to him.

40th. That Fees shall be established on every Tullubchitty, Perwannah, or written Order of whatever Kind, issued during the Course of the Cause ; to be extracted from the Party at whose Application such Order is issued ; and that Fees shall also be taken on every Exhibit, at the Rate of Two Annas per Sheet.

41st. That the Sums received agreeable to the 36th, 38th, 39th, and 40th Articles of these Regulations, either on Account of Commission, or for Fees, or Orders, and Exhibits, shall be reserved and appropriated by the Superintendent, as a Fund for defraying the Charges of the Court ; and that the Superintendent shall deliver Monthly, to the Governor General and Council, a particular Account of his Receipts and Expenditures.

42d. That the Superintendent, on all Points which have not been expressly provided for by these Regulations, shall act discretionally, and according to the best of his Judgment ; and that he shall not be removable from his Office, except at his own Requisition, or on Proof of some Misdemeanor.

43d. That the above Rules shall be read over to each Superintendent before he is invested with his Office ; and that he shall be required to take the following Oath : "I do swear, That I will administer Justice to the best of my Ability, Knowledge, and Judgment, without Fear, Favour, Hope, or Reward ; and that I will not receive, directly or indirectly, any Presents, or Nuzzers, either in Money or in Effects of any Kind, from any Party in any Cause, or from any Person whatsoever, on Account of any Suit to be instituted, or which may be depending, or have been decided in the Court of Adaulut, under my Jurisdiction, nor will I knowingly permit any Person or Persons under my Authority, or in my immediate Service, to receive, directly or indirectly, any Presents or Nuzzers, either in Money or in Effects of any Kind, from any Party in any Cause, or from any Person whatsoever, on Account of any Suit to be instituted, or which may be depending, or have been decided, in the Court of Adaulut, under my Jurisdiction ; and that I will render true and faithful Account of all Sums received for Commissions on Causes, and Fees of Court, and of all Expenditures."

That these Regulations shall be considered as binding, only until a new Arrangement shall be made by Authority of Parliament.

73

## A P P E N D I X, N<sup>o</sup>. 4.

*Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 11th April, 1780.*

Read again, the Plan entered in Consultation the 28th ultimo, for the Administration of Justice in these Provinces.

Agreed, That it be carried into Execution.

Agreed, That the Superintendents of Adaulut be allowed a monthly Salary of One thousand Sicca Rupees, and an Allowance of Three hundred Sicca Rupees for House Rent, in lieu of all Contingencies.

The Governor General recommends the following Persons to be appointed Superintendents of the respective Adauluts.

Calcutta,	Mr. Thomas Dugald Campbell.
Moorshedabad,	Mr. Edward Otto Ives.
Burdwan,	Mr. Hugh Auster.
Dacca,	Mr. Alexander Duncanson.
Dinagepore,	Mr. Benjamin Grindall.
Patna,	Mr. John Guichard Booth.

Agreed, That the above Gentlemen be appointed accordingly.

Agreed, That the Plan be notified to the Provincial Councils in the following Letter.

(Circular.)

To Mr. David Anderson, Chief, &c. Council of Revenue at Calcutta.

Gentlemen,

We now inclose you a Set of Regulations, which we have thought proper to establish for the Administration of Justice in these Provinces, and require your particular Attention and strict Adherence to the Rules and Ordinances contained therein.

We likewise direct you to give every Assistance and Support in your Power to the Superintendents of Adaulut, in the Performance of the particular Duties assigned to them; and to give Force and Effect to the Regulations themselves.

We have been careful to distinguish and discriminate the particular Objects of your Jurisdiction, and those of the Superintendents of Adaulut, and have left with you exclusive Jurisdiction in all Matter which directly concern the Revenue, and some which may more distantly affect the Collection of it; and these we think proper that you should carefully retain and exercise; but that you refer all Cases of Meum and Tuum, and Disputes of Personal Property and Personal Rights, on which Application may be made to you, to the Decision of the Superintendent of Adaulut, in whom we have thought proper to vest this Authority; meaning, that your Time and Attention shall not be taken up in hearing and determining Matters of a judicial Nature, except in Cases which arise out of or concern the Collection of the Public Revenue, which will relieve you from a great Degree of Labour and Responsibility, and enable you to apply with more Effect to the Performance of the other Duties of your Station, the keeping up the Collection of the Revenues under your Charge, and preventing Oppressions by a speedy Adjustment of all Disputes and Differences which may arise in consequence.

You will observe, that we have been careful to restrain the Authority of the Superintendent of Adaulut, in such particular Cases as might interfere with, or obstruct the Collection of the Revenues, by prohibiting him from sending Persons with Authority into the Lands of the Zemindars or Farmers, or calling Persons from the Mofussil during the Months of the heavy Collection, or summoning Farmers, Zemindars, or Collectors of the Revenue, except through the Medium of your Board. But in all such Cases where the Superintendents may have Occasion to apply to you for your Assistance, it is our Directions that you afford it to the utmost of your Power, as far as the particular Circumstances of the Case may admit; and in general, that you consider the Spirit as well as the Letter of these Regulations, and endeavour to conform thereto, by co-operating with the Superintendent, and promoting, as far as may depend on you, the Administration of Justice in the Division under your Authority.

SER. COM. REP. I.

[ F ]

We

## A P P E N D I X, N<sup>o</sup>. 4.

We have appointed Mr. Thomas Dugald Campbell Superintendent of Adaulut for your Division; whom you will therefore call before you, and having read over to him the Regulations, tender him the Oath prescribed by the 43d Article, before he is invested with his Office. The Oath must be entered in a Book kept for that Purpose; and after it has been administered, must be signed by the Superintendent.

The Salary of the Superintendent has been fixed at 1,000 Sicca Rupees, with an Allowance of 300 Sicca Rupees per Month for House-rent, in lieu of all Contingencies.

Fort William,  
the 11th April 1780.

We are, &c.

The same to Moorshedabad,	Mr. Ives.
Burdwan,	Mr. Aufer.
Dacca,	Mr. Duncanson.
Dinagepore,	Mr. Grindall.
Patna,	Mr. Booth.

Ordered, That the Secretary do advise the Superintendents of the Adauluts, of their Appointments, and furnish them with Copies of the Regulations for their Guidance.

*Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 29th September 1780.*

The Governor General delivers in the following Minute, which he requests may be entered in this Day's Proceedings; but the Subject of it being of too much Importance for any immediate Decision, that it lie for Consideration till the next Meeting of the Board.

Governor General.—The Institution of the new Courts of Dewanee Adaulut has already given Occasion to very troublesome and alarming Competitions between them and the Provincial Councils, and too much Waste of Time at this Board. These, however, manifest the Necessity of giving a more than ordinary Attention to these Courts, in the Infancy of their Establishment, that they might neither prevent the Purposes, nor exceed the Limits of their Jurisdiction, nor suffer Encroachments upon it.

To effect these Points, would require such a laborious and almost unremitting Application, that however urgent or important they may appear, I should dread to bring them before the Consideration of the Board, unless I could propose some Expedient for that End, that should not add to the Weight of Business with which it is already overcharged.

That which I have to offer, will, I hope, prove rather a Diminution of it.

By the Constitution of the Dewanee Courts, they are all made amenable to a superior Court, called the Sudder Dewanee Adaulut, which has been commonly, but erroneously, understood to be simply a Court of Appeals. Its Province is, and necessarily must be, much more extensive. It is not only to receive Appeals from the Decrees of the inferior Courts, in all Causes exceeding a certain Amount; but receive and revise all the Proceedings of the inferior Courts; to attend to their Conduct, to remedy their Defects, and generally, to form such new Regulations and Checks, as Experience shall prove to be necessary to the Purposes of their Institution.

Hitherto the Board has reserved the Office to itself; but hath not yet entered on the Execution of it; nor, I will venture to pronounce, will it ever, though Half of its Time were devoted to this simple Department.

Yet, without both the Support and Controul of some powerful Authority held over them, it is impossible for the Courts to subsist; but they must either sink into Contempt, or be perverted into the Instrument of Oppression.

This Authority, I repeat, the Board is incapable of executing; and if delegated to any Body of Men, or to any individual Agent, not possessing in themselves some Weight, independent of mere official Power, it will prove little more effectual. The only Mode which I can devise to substitute for it, is included in the following Motions; which I now submit, on the Reason premised, to the Consideration of the Board:

That the Chief Justice be requested to accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, under its present Regulations; and such other as the Board shall think

## A P P E N D I X, N° 4.

think proper to add to them, or to substitute in their Stead ; and that on his Acceptance of it, he be appointed to it, and stiled " The Judge of the Sudder Dewanee Adaaulut."

I shall beg Leave to add a few Words in Support of this Proposition, on different Grounds.

I am well aware, that the Choice which I have made for so important an Office, and one which will minutely and nearly overlook every Rank of the Civil Service, will subject me to much popular Prejudices ; as its real Tendency will be misunderstood by many, misrepresented by more, and perhaps dreaded by a few.—I shall patiently submit to their Consequences, because I am conscious of the Rectitude of my Intentions, and certain that the Event will justify me, and prove, that in whatever Light it may be superficially viewed, I shall be found to have studied the true Interest of the Service, and contributed the most effectually to its Credit.

The Want of legal Powers, except such as are implied in very doubtful Constructions of the Act of Parliament, and the Hazards to which the Superiors of the Dewanee Courts are exposed in their own Persons, from the Exercise of their Functions, has been the principal Cause of their Remissness, and equally of the Disregard which has been in many Instances shewn to their Authority. They will be enabled to act with Confidence ; nor will any Man dare to contest their Right of acting, when their Proceedings are held under the Sanction and immediate Patronage of the First Member of the Supreme Court, and with his Participation, in the Instances of such as are brought in Appeal before him, and regulated by his Instructions. They very much require an Instructor, and no one will doubt the superior Qualifications of the Chief Justice, for such a Duty.

It will be a Means of lessening the Distance between the Board and the Supreme Court, which has perhaps been, more than the undefined Powers assumed to each, the Cause of the Want of that accommodating Temper, which ought to have influenced their Intercourse with each other. The Contention in which we have been unfortunately engaged with the Court, bore, at one Time, so alarming a Tendency, that I believe every Member of the Board foreboded the most dangerous Consequences to the Peace and Resources of this Government from them. They are at present composed, but we cannot be certain that the Calm will last beyond the actual Vacation, since the same Grounds and Materials of Disunion subsist ; and the Revival of it, at a Time like this, added to our other Troubles, might, if carried to Extremities, prove fatal.

The Proposition which I have submitted to the Board, may, nor have I Doubt that it will prove an Instrument of Conciliation with the Court, and will preclude the Necessity of its assuming a Jurisdiction over Persons exempted, by our Construction of the Act of Parliament, from it. It will facilitate and give Vigour to the Course of Justice ; it will lessen the Cares of the Board, and add to their Leisure for Occupations, more urgent and better suited to the Genius and Principles of Government : Nor will it be any Accession of Power to the Courts ; even that Portion of Authority, which is proposed to be given, given only to a single Man of the Court, and may be revoked, whenever the Board shall think it proper to resume it.

*Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 24th October, 1780.*

The Governor General's Minute, concerning the Sudder Dewanee Adaaulut, recorded in the last Consultation, having been sent in Circulation, for the Opinions and Decision of the Board ; the Opinions delivered thereon are entered in the Order in which they were received.

Mr. Francis.—I have not had sufficient Time to give this important Proposition all the Consideration it deserves : The Reflections which it suggests, must be stated hastily as they occur. That this is a fresh Innovation, succeeding many others, in the Administration of Justice to the Natives of this Country, is of itself a weighty Objection. All Innovations of this Nature are dangerous, especially in a Country, whose Government cannot divide or surrender any of its Powers, without lessening the Respect, and hazarding the Obedience of its Subjects. On this Principle we contended for the exclusive Jurisdiction of the Governor General and Council, as Dewan over the Zemindars, Landholders, and Landed Property of this Country. In my Judgment, the Proposition amounts to a direct Contradiction or Desertion of every Thing we said, or did, in the Case of the Rajah of Cossijurah. As such it will be naturally received and understood by the Natives. They cannot distinguish between the Chief Justice and the Supreme Court ; or if the Distinction could possibly be explained to them, and if they could be satisfied, that in fact it was not intended to reinstate the Court in the Exercise of the Jurisdiction which it had claimed, and which we had resisted, it is probable they would think that some greater Evil was to befall them. I hope it is unnecessary for me to say, that no Idea of personal Disrespect to the Chief Justice can be intended, in any Thing I shall offer on the public Question before me : If any Expression that may appear to have such a Tendency, should escape me, I disclaim it. I mean to examine the proposed Institution in its own Merits, and the Difficulties

## A P P E N D I X, N° 4.

ties it may be subject to as a public Measure, without Reference to the personal Character or Qualifications of any Individual.—I shall follow the Reasoning of the Governor General's Minute, in the Order in which he has placed it.

1st. If the Institution of the new Court has already given Occasion to Competitions between the Provincial Councils, and the Dewanee Adauluts, it is *our* Business and Duty to put an End to them by *our* Authority, which is direct, and sufficiently coercive over both Parties. We ought to draw the Line between them, and insist on their respective Submission to the Limitation described by it. I do not think, that to effect this Point, would require any very laborious Application on our Part. Our Administration wants Vigour, not Time, to execute all its Duties. One Punishment would have more Effect than a Thousand Regulations. But if the Argument were well founded, how is the Difficulty removed, by transferring this laborious Service to the Chief Justice, who is already so overloaded with the Business of the Supreme Court, that he finds it impossible to assist his Brethren as acting Justices of Calcutta, and therefore is very justly excused from sharing with them in the Toil of that troublesome Office?

2d. The Sudder Dewanee Adaulut, I know, has been commonly, but I do not think it is erroneously, understood to be simply a Court of Appeals. The 6th Article of the Plan for the Administration of Justice, provides, *That the Dewanee Sudder Adaulut shall receive and determine Appeals from the Provincial Dewanee Adauluts*; and it says no more. If its Province be, and necessarily must be, *much more extensive*, the Extent of it should be accurately described and defined. For my own Part, I know not where to look for this necessary Definition; but I know that a Jurisdiction not so defined, either has no Power at all, or it is despotic. A Court of Appeal, as such, can do nothing but receive Appeals from the Decrees of inferior Courts. If it is to receive and revise *all* the Proceedings of such Courts, it must itself cease to be a Court of Appeal; for what Suitor will appeal to a Superior Court, which has already revised, approved, and confirmed the very Proceedings by which he thinks himself injured? If a Court of Appeal adheres to the true Principles of its Institution, it should know nothing of the Proceedings of the inferior Court, until an Appeal from the Decree of that Court, comes regularly before it. If it has already approved of the Proceedings below, it is, *instanter*, a Party, and cannot be Judge.

As to the other Duties proposed, "of attending to their Conduct, of remedying their Defects, and forming new Regulations, &c." these are Objects for the legislative Power of the Country, which, I understand, *quoad hoc* at least, is exclusively and unalienably vested in the Governor General and Council.

3d. I am of Opinion that the Office might be exercised by the Board, or by any Two Members of it; and that Two or Three specific Days allotted in a Month to this Duty, would be sufficient to perform it.

4th. I must object to the Request proposed to be made to the Chief Justice, for the following Reasons: The Governor General and Council cannot, without departing from the Principles on which they have unanimously acted, establish the Sudder Adaulut on any Plan, which commits the Company's Rights, or ours, in Quality of Dewan of the Provinces, to the Custody of all or any of the Judges. The Supreme Court and Council differ widely in their Ideas of the Jurisdiction of the Court. The Chief Justice cannot be supposed to have changed the Opinions, which he has at all Times so strictly maintained; and those Opinions would lead him to submit to the Jurisdiction of the Court in many Instances, in which the Council, upon *their* Principles, would resist them. Thus the Council, by making the Chief Justice Judge of the Sudder Adaulut, would put it into the Power of the very Man with whom they have been contending, to give up what they hitherto insisted on as their essential Rights.

The great Object of this Plan, is to give Authority to the Dewanee Adauluts; but I cannot admit that the Means are likely to answer the End. The Arguments drawn from the elevated Station of the Chief Justice, have no Weight. He can carry none of the Powers of the Supreme Court into the Sudder Adaulut. When he acts under the Appointment of the Council as Superintendent, he will possess no Part of the Authority which he derives from the King's Appointment of Chief Justice. It will not prove an Instrument of Conciliation, nor prevent the Revival of Disputes, which it is said might prove fatal. It is admitted by the Governor, that the Grounds of Division still subsist; and it is certain, that the Appointment of the Chief Justice to the Sudder Adaulut, will make no Alteration in the Authority and Powers of the Supreme Court. The remaining Judges will have the same Powers which they all now possess; because the Council cannot, by new modelling the Adauluts, abridge, or in any Way affect, the Powers of the Court. If the Chief Justice carries his late Opinions into the Sudder Adaulut, the Supreme Court will obtain Strength from the Appointment: If he acts on new Principles, more conformable to those of the Council, that will raise fresh Difficulties; it will tend to make a Breach between him and the other Judges, but can never repair the Breach already subsisting between the Court and Council. I use the Language which has already been applied by us to the Judges, when I say, *That there is a Jealousy, which all Men feel for their own Power and Consequence*. The Two Puisne Judges

## A P P E N D I X, N<sup>o</sup>. 4.

cannot but feel themselves wounded by this partial Selection of the Chief Justice, and the Preference given to his superior Qualifications. We ought not to offer them such Cause of Offence, nor ought we to be careless of the Effects it may produce.

I conceive that the Appointment of the Chief Justice to this Office, would clash and be inconsistent with the Duties of his present Station. It would be an insuperable Bar to his acting in many Cases, in which his Duty as Chief Justice would call on him to act. Suppose a Suitor in the Adaulut should think the Judge had acted *illegally*; he might bring his Action against him in the Supreme Court; and when, upon the Principles on which the Court and the Chief Justice have particularly insisted and acted, he would be obliged to come as a Party into the Court in which he ought to preside as Chief Justice, to plead in the usual Form, and to defend himself in the usual Way; and he might be compelled to pay Damages for what he had done as Superintendent, in the same Manner that the Council at Patna were for their Proceedings against Nadara Begum. Thus his Proceedings in the Adaulut, would bring him a Party in his own Cause, and preclude him from acting in his Capacity of Chief Justice. Again; suppose a Person committed by any of the inferior Adauluts, or by the Chief Justice himself as Judge of the Sudder Adaulut, should apply to him for a Writ of Habeas Corpus; shall he refuse the Writ, because the Grounds of the Commitment are already known to him? or shall he grant it though possessed of such Knowledge, and where himself has prejudged the Question, by ordering or approving the Commitment? I cannot presume to say, how far it would be his Duty to grant the Writ at all Events; but it is evident that the Prisoner would gain nothing by obtaining it. It may be said, the Person so committed may apply for a Writ of Habeas Corpus to one of the Puise Judges. If he succeeds (as he certainly would, if in the Opinion of the Judge there should be Reason to suppose the Commitment might be illegal) it would follow, that the Act of the Superintendent would be canvassed, and perhaps set aside by an inferior Judge of another Court, in which the Superintendent himself presides. This Case might frequently occur; and if it should ever occur, it would tend to create new Differences between the Supreme Court on the one Side, and the Sudder Dewanee Adaulut, supported by the Chief Justice of the Supreme Court, on the other.

On the whole, I think it would be improper in the Council to request the Chief Justice to take upon himself, and perhaps illegal in him to accept, an Office, which is so inconsistent with the Duties of his present Station, and which would preclude him from exercising the Trust reposed in him by the King, in many Cases of the greatest Importance; particularly those, in which the Limits of the Jurisdiction of the Court, and the Extent of the Powers vested in the Council, might come in Question.

One of the Observations with which the Governor General concludes his Argument, in Favour of his Plan, viz. "That the Portion of Authority which is proposed to be given, is given only to a single Man in the Court," appears to me a strong Objection against it. The English Government has very sparingly delegated judicial Authority to single Persons; *final Appeals*, in particular, are never permitted to be tried by a single Judge, either in England, or any of its Provinces or Dependencies. The King is, I believe, the only single Person to whom such an appellate Jurisdiction is even nominally given; and he cannot try an Appeal without the Assistance of his Privy Council: Appeals to him therefore are called Appeals to the King in Council.

This Policy has nothing to do with Trials by Jury on Principles of English Liberty, which may be thought inapplicable to Bengal; but is founded on that Justice to which the Natives of Bengal are entitled, as well as other Men. But Justice requires, that in the Constitution of a Court, Corruption be above all Things guarded against; and no Magistrate is more liable to Corruption than a Judge, in whom is vested a Power of determining Appeals, without being either checked by Associates, or controlled by any further Appeal to superior Judges. The Legislature, in establishing the Supreme Court of Judicature here, though it be not a Court of Appeal, and though an Appeal may be made from its Decisions to the King in Council, thought a Plurality of Judges necessary; and therefore created so many, that it is not likely they should be reduced by Chance to one. Mr. Hastings and his Council, when they erected the Court of Sudder Dewanee Adaulut, would not leave such Reduction in the Power of Chance, but made the Presence of Three Members essentially necessary to a Decision. If I could believe it lawful and proper for us to delegate our judicial Authority to Judges of the Supreme Court, I should think it ought rather to be given to *all* than to one. If all the Powers of the Sudder Dewanee Adaulut be vested in one Man, yet so vested, "that they may be revoked whenever this Board shall think it proper to resume them;" such a Judge may become, in the Hands of a corrupt Council, an Instrument of Oppression; the Council will not be answerable for his Decrees; and he will be, in a great Measure, protected by his judicial Capacity. The Authority given may undoubtedly be revoked whenever the Board shall think proper to resume it. The present Board cannot bind their Successors, nor even themselves, against a Change of Opinion.—But will the Chief Justice accept of such an Office, on so precarious a Footing? or, would it be respectful in us to offer it to him, with the Information which ought to accompany it, viz, That he is removable at any Time by a Resolution of the Board?

(Signed) P. Francis.

## A P P E N D I X, N<sup>o</sup> 4.

Sir Eyre Coote—As the determining upon Points relative to Law Proceedings, has fallen so little within the Limits of my Profession, I acknowledge myself inadequate to the forming a thorough Judgment concerning the Plan proposed by the Governor General.

But trusting to his full Knowledge of that Branch of Government; which he now means to bring under the Controul of Inspection, and from a real Sense of the Abilities of the Chief Justice, to render any Department of Superintendence; which should be entrusted to his Charge, no less useful and beneficial in Effect than in Idea; I give my Assent to the Measure; observing at the same Time, however, that this Assent is for the Trial of an Expedient which may be attended with favourable Consequences, and not for its absolute Establishment; and I therefore reserve to myself full Liberty to vote for the Repeal of the present Resolution, should I find it prove hereafter in any Respect detrimental, either to the great Lines of Government, or to the Community.

(Signed)

E. C.

Mr. Wheeler.—No one can be more sincerely desirous than I am, of the due Administration of Justice in this Country.

By the late Act of Parliament, this Branch is divided between the Supreme Court and the Government; what the Act hath not committed to the former, it confirms to the latter; and whenever the Extent of the respective Jurisdictions is not clearly defined, or is oppositely viewed, their mutual Candour, and Regard to the Public Good, should influence: Through these Channels only can Justice flow here.

This Board, in the late Institution of Dewanee Courts of Adaulut, hath thought itself acting in the Province left to it by the Legislature, and making an effective Regulation for the Benefit of the Country. I am sorry to find, from the Governor General's Minute, that he now sees the Institution in a different Light, in both these Respects. He conceives, that "the Superiors of the Adauluts, have no legal Powers, except such as are implied in very doubtful Constructions of the Act of Parliament;" and that the Court of Appeals, established to controul their Proceedings, and support their Authority, can never prove effectual for these Purposes.—If the Institution has really these Evils in it, I am willing to deliberate upon proper Remedies for them; to reduce it, if it has exceeded the due Limit; or if it is found to be essentially defective, to agree to an essential Change in it: But at present, I must confess these Positions are not evident to me. And supposing them to be established, in the Application of Remedies we can have no Standard but the Lines marked out by the Act of Parliament; which assigns a separate Jurisdiction to each of the Two Departments, or implies the Duty of a Co-operation of both. Although I entertain all due Deference for the Chief Justice, and feel myself embarrassed by the Personality which mixes in the Question before us; yet I must beg Leave to say, that the Expedient proposed by the Governor General, seems not to fall in with any of the Intentions of the Act; but to be opposed by Difficulties, as well as to threaten Consequences, which, unless obviated, must determine me to withhold my Assent to it.

Some of the present Difficulties are these:—First; If the Governor General and Council, have no other legal Power to appoint Superintendents of the Adauluts, than what is *implied* from a *doubtful Construction* of the Act of Parliament, then they should not have proceeded to an Establishment of such Importance, nor should they now persist in it; their Business in such Case, is to act in Concert with the Court.

2d. If they have not in themselves competent Power for this Establishment, they in like Manner are not competent to confer upon any Individual, that Authority with which it is now proposed to invest the Chief Justice.

3d. Unless the Chief Justice acknowledges the Validity of the Board's Institution (which will be a great Authority against the Governor General's Argument) he cannot consistently accept of the Office proposed for him. And the same Remark may be extended to the Opinions of the other Judges. His Acceptance of an Office, cannot establish the Legality of the Power that confers it.

4th. The Union of different Powers, in the Person of the Chief Justice, can be no regular Conciliation of the Two Departments. The Interposition of his Person, may indeed prevent their clashing for a Time; but this effects no real Adjustment of Principles between them; and it does not seem allowable for us to conclude, that a particular Distinction shewn to the Chief Justice, will suppress all Opposition of Sentiment from the other Judges. Nor does this Mode of procuring Peace, if it should succeed, appear the most honourable or safe for ourselves; for after delegating so much Power, both Departments are still left exposed at the Pleasure of the Chief Justice, to the future Eruption of their unextinguished Differences.

5th. If, for the Purposes of conciliating the Court, and giving Efficacy to the Adauluts, such an Authority is to be bestowed, it would seem that these Purposes would be better answered, and all Danger of infringing the Act of Parliament avoided, by delegating the Power of hearing Appeals to all the Judges of the Supreme Court, or associating them with ourselves, and holding such Power

## A P P E N D I X, N<sup>o</sup>. 4.

Power in Conjunction with them; which falls in with one Part of the Bill transmitted to the Court of Directors, in the Year 1776.

6th. By an Appointment of this Nature the Independence of both Departments may be endangered. By separating the Members from their Departments, a System of mutual Influences, which may occasionally operate too powerfully upon each, is at once founded.

7th. Such an Union of different Powers, is beyond the Scope of the Act of Parliament, and foreign to the Constitution of the Company's Government. A great Salary, high Rank and Consideration, are annexed to the Office of Chief Justice, most probably upon the Supposition, that the Person advanced to it could here receive no Augmentation in any of these Things; and it seems inconsistent with his Appointment from the King, *which makes him independent*, to accept of another Appointment under the Company, *during the Pleasure of this Board*.

8th. In the Office proposed to be given to the Chief Justice, it does not appear how he can be held, either under Controul or Responsibility. He cannot be separated from the Privileges of his original Office; yet the Exercise of them, in all that relates to the new Appointment, must be quite discretionary with him.

The Apprehensions which I entertain, and have alluded to in the former Part of the Minute, are these.

1st. That it will be thought requisite, if this Appointment takes Place, to annex a large Salary to it, and an ample Establishment. In our present State, when we can hardly raise Money for our necessary Occasions, I should think such an Expence utterly inadmissible.

2d. Decisions might probably go upon the Principles of English Law. The Introduction of this Practice should, in my humble Opinion, be previously and maturely considered.

3d. If Attorneys and Solicitors should be admitted to practise in the Court of Appeals, a new and wide Door of Litigation would be opened: The Company have no Controul over Attorneys and Solicitors.

4th. The Business of the Court of Appeals must give Opportunity for a thorough Inspection of all the Affairs of the Revenue, and Proceedings of the Provincial Councils; of course, a very powerful Influence over both Europeans and Natives.

5th. Such an Influence, possessed by the Chief Justice of the Supreme Court, might too much hide the Government from the Eyes of the Natives.

Waving further Objections, I now repeat my Wish to see these obviated; and whatever may be wanting, for an effectual Controul over the Country Courts, supplied. If the Service should indeed require an extraneous Check, delicate and important as this Point is, I would by no Means have it understood that I would oppose it; but before this is applied, I think several other Expedients might be tried.

1st. The Company's chief Law Officer here seems to be the Person to whom Recourse should first be had, his Station being similar to that of the Company's Counsel in England, who attends on all Questions of Law, and gives his Opinion and Advice. I think, that by introducing in the same Manner, the Advocate General into the Court of Appeals, the Business of that Court might be made easy to the Members of the Board; and I must think also, that if such an Officer as Judge of Appeals should be created, he has the most natural Right to it.

2d. The Supreme Court and the Governor General and Council might sit together as a Court of Appeals, according to the Principle of the Bill already mentioned.

3d. The Objections against the Chief Justice, lie with less Force against either of the inferior Judges; and,

4th, Least of all against the Presidency of all the Judges, in Rotation.

### *Board's Resolution of the 18th October.*

Resolved, That the Chief Justice be requested to accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaylut, under its present Regulations, and such as the Board shall think proper to add to them, or to substitute in their stead; and that on his Acceptance of it, he be appointed to it, and styled "The Judge of the Sudder Dewanee Adaulut."

The Secretary having, by the Governor General's Directions, waited on the Chief Justice with the preceding Resolution, he lays before the Board a Letter delivered to him by the Chief Justice, in Answer.

*To the Honourable the Governor General and Council, &c. &c.*

Honourable Sir and Sirs,  
Your Secretary, Mr. Baugh, has this Morning communicated to me your Resolution of the 18th Instant.

## A P P E N D I X. N<sup>o</sup>. 4.

I am sensible of the Honour conferred on me, by the Trust you have reposed in me;—accept of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, under its present Regulations, and such others as the Board shall think proper to add to them, or to substitute in their stead; and will, with great Readiness, dedicate my vacant Time to the Service of the Public.

Fort William,  
19th October, 1780.

I have the Honour to be, &c.

(Signed) E. Impey.

Agreed, conformably to the Resolution of the Board, that the Chief Justice be appointed Judge of the Sudder Dewanee Adaulut.

Ordered, That Notice of the Chief Justice's Appointment be sent to the Superintendents of the several Dewanee Adauluts; and agreed, That the Provincial Councils be also advised thereof, as follows:

*To Mr. David Anderson, Chief, &c. Provincial Council for the Division of Calcutta, at Houghly.*

Gentlemen,

The Chief Justice having accepted of the Charge and Superintendency of the Office of Sudder Dewanee Adaulut, we have appointed him to it, with the Title of Judge of that Court.

Fort William,  
the 26th October, 1780.

We are, &c.

The same to all the Provincial Councils.

The Governor General recommends, that a Salary of 5,000 Sicca Rupees, and 600 Sicca Rupees per Month for the Rent of an Office, may be allowed to the Chief Justice for this Appointment; and that the Motion do lie for the Consideration of the Board, to be decided on at their next Meeting.

Agreed, That it do lie accordingly.

*Extract of the Proceedings of the Governor General and Council at Fort William, in their Revenue Department, the 3d November 1780.*

The Governor General lays before the Board, the following Regulations for the Sudder and inferior Dewanee Adauluts, prepared by Sir Elijah Impey, and carefully revised by him; and recommends, that they may be transmitted to the Superintendents with the necessary Orders, requiring their Conformity to them.

1st. That all Rules, Orders, Regulations, and Resolutions respecting the Court of Sudder Dewanee Adaulut and Provincial Dewanee Adauluts heretofore established by the Authority of any former President and Council, Governor General and Council, or Court of Sudder Dewanee Adaulut, be confirmed, and be and remain Standing Rules and Orders of the said Courts respectively; except in such Matters and Things as the same may be varied by the Rules and Orders hereby established, or which shall hereafter be established by the Governor General and Council, or by the Sudder Dewanee Adaulut.

2d. That the Judges of the Provincial Dewanee Adauluts do execute and perform all such Matters and Things which were required to be executed and performed by the Collectors, Provincial Councils, or any Judge or Judges of any Provincial Dewanee Adaulut, respecting the Administration of Justice in the Month of May 1772, or by any subsequent Rule, Order, Regulation, or Resolution of the late President and Council, Governor General and Council, or Court of Sudder Dewanee, in as much as the same are consistent with, or conformable to, the Rules, Orders, Regulations, and Resolutions hereby made.

3d. That it be not competent to the Sudder Dewanee Adaulut to proceed on any Appeal in any Cause heretofore decreed and adjudged in any Provincial Dewanee Adaulut, unless the same shall have been presented to a Provincial Dewanee Adaulut, or to the Sudder Dewanee Adaulut, before the First Day of June, which shall be in the Year of our Lord 1781: That all Appeals against any Judgment, Decree, or final Order, which shall be made in any Provincial Dewanee Adaulut,

## A P P E N D I X, N<sup>o</sup>. 4.

Adaulut, after the First Day of November 1780, shall be presented within Three Calendar Months after the Day of the Decree given, and Copies thereof delivered to the Parties : That in every Case where any Appeal shall be presented to the Provincial Dewanee Adaulut, the Judge of the said Court shall immediately indorse thereon, in his own Hand Writing, and sign it with his Name, the Day of the Month and Year in which such Petition was presented ; and if the original Cause of Action be concerning the Right or Possession of any Houses or Lands, all Proceedings shall immediately be stayed, and no Execution had, or Possession given under the Judgment, Decree, or final Order appealed against, until the said Appeal shall have been finally determined in the Sudder Dewanee Adaulut : Provided, that the Party appealing shall enter into good and sufficient Security to abide by such Judgment, in a Sum not exceeding Five hundred Sicca Rupees, for the Purpose of answering such Costs as the opposite Party may be put to in consequence of such Appeal : And if the Petition of Appeal be in any Case in which any Sum of Money, Goods, or Chattels, be adjudged to the Plaintiff, then such Security to be taken for the Sum decreed, or for the Value of such Goods and Chattels, together with Five hundred Sicca Rupees, for the Purpose of answering such Costs as the opposite Party may be put to in consequence of such Appeal.

4th. That the Judge of such Provincial Dewanee Adaulut shall, within Ten Days next after the Receipt of such Appeal, certify under his Hand and Seal, to the Judge of the Sudder Dewanee Adaulut, the original Arzee, Petition, or Plaintiff, together with the original Answers or Answer of the Defendants or Defendant ; the original Depositions taken in the Case ; the original Exhibits, and every Rule, Order, Decree, Judgment, Matter, or Thing, in anywise relating to the said Case ; and shall cause to be made true and exact Copies of all such Proceedings as shall be transmitted to the Sudder Dewanee Adaulut, authenticated by the Register or Clerk of such Provincial Dewanee Adaulut ; which said Copies shall be and remain of Record in such Court : That where any Appeal shall be presented directly to the Sudder Dewanee Adaulut, the Judge of the Court in which the original Cause was instituted, shall obey all such Rules and Orders of the Sudder Dewanee Adaulut as shall be certified to him under the Seal of the said Sudder Dewanee Adaulut, witnessed by the Judge of the Sudder Dewanee Adaulut, and signed by the Register of the said Court.

5th. That before any Appeal be allowed by the Sudder Dewanee Adaulut, that, besides what was heretofore required by the said Court, the Party appealing shall enter into such Security for the due Prosecution of his Appeal, and Payment of Costs, as the said Sudder Dewanee Adaulut shall think fit to award.

6th. That upon the passing of every Decree, Judgment, or final ordinary Case in the Provincial Dewanee Adaulut, each Party be immediately furnished with a Copy thereof ; and that the same be tendered to, or delivered to them or their Vackeels, properly authorized : And the Register or Chief Clerk of the said Court shall endorse thereon, the Date of the Time on which such Decree was made, and Copies delivered, and authenticate the same with his Signature in his own Handwriting.

7th. That all Process, as well to the Party as Witnesses, and all Process whatsoever, and all Rules and Orders for the Execution of any Judgment, Decree, or final Orders, or any Matter whatsoever relating to any Cause depending in the Sudder Dewanee Adaulut, be directed to the Judge of the Provincial Dewanee Adaulut in which the Cause of Action shall originally have arisen, or in whose Jurisdiction the Lands be situated, or the Parties or Witnesses shall be or reside ; and that every such Process, Rule, and Order, do limit a Time certain, within which the same shall be served, executed, and returned to the said Sudder Dewanee Adaulut ; which Process, Rules, and Orders, shall be sealed with the Seal of the said Sudder Dewanee Adaulut, attested by the Judge thereof, and authenticated by the Register thereof ; and the Judge to whom the same shall be directed, shall execute the Orders contained in such Process, Rule, or Order, and return the same within the Time limited, or return to the said Court good and sufficient Reason why the same hath not been served or executed ; and what the said Judge hath done in pursuance thereof : Provided, that if any Judge to whom such Process, Rule, and Order, shall be directed, shall wilfully disobey or neglect to perform the Commands therein contained, or shall make a false Return thereto, such Judge shall be liable to be suspended from his Office, by Order of the Judge of the Sudder Dewanee Adaulut, until the Governor General and Council shall, upon Report to be made to them by the Sudder Dewanee Adaulut, have examined into and determined on the Matter reported to them ; and if the Sudder Dewanee Adaulut shall suspend such Judge, the Judge of the Sudder Dewanee Adaulut shall, within Ten Days after such Suspension, report to the Governor General and Council such Suspension, together with the Cause thereof, and certify under his Hand, and the Seal of the Sudder Dewanee Adaulut, all such Proceedings, Depositions, and Exhibits, and all other Matters which may be necessary for the Examination into and Determination upon such Suspension ; and shall, on Requisition of the Governor General and Council, transmit to them all such Papers and Proceedings in the Cause, which they may esteem necessary for their Investigation.

8th. The Sudder Dewanee Adaulut is hereby authorized and empowered to frame such Rules of Practice, and Standing Orders, for the Administration of Justice as well in the said Sudder Dewanee Adaulut,

SEL. COM. REP. I.

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## A P P E N D I X, N<sup>o</sup>. 4.

Adaulut, as in the Provincial Dewanee Adauluts, so that the same be transmitted to the Governor General and Council, under the Seal of the Sudder Dewanee Adaulut, for their Approbation, Controul, or Alteration; and the Judges of the respective Provincial Courts are hereby strictly enjoined and commanded, in every Act, Matter, or Thing by them to be done, strictly to conform to the Rules and Regulations hereby transmitted to them, and to all other Rules of Practice and Standing Orders for Administration of Justice, which shall hereafter be transmitted to them from the Sudder Dewanee Adaulut, under the Seal of the said Court, witnessed by the Judge thereof, and signed by the Register thereof.

9th. That the Judge of the Sudder Dewanee Adaulut, be authorized to make such reasonable Adjournments as consistently with the Business thereof he may think fit; and in case of his Absence through Illness, that the Register do make such Adjournments as he shall direct.

10th. That the Judge of the Sudder Dewanee Adaulut may, for just Cause, remove any Officer or Officers of the said Court; and that in case of the Death, Removal, Resignation, or other Avoidance of any Office held under the said Court, the Judge of the said Court be authorized to appoint any other Person or Persons, duly qualified, to such Office or Offices as shall have become vacant.—That in case of Vacancy of the Office of Register to the said Court, no Appointment be made thereto, without the Consent and Approbation of the Governor General and Council; and all such Officers so appointed, shall be entitled to have and receive such Salaries and Emoluments as were enjoyed by their Predecessors respectively.

11th. That it be competent to the Sudder Dewanee Adaulut to hear, try, and determine any Arzee, Petition, Matter of Complaint, or Dispute whatsoever, which shall be for that Purpose transmitted to the said Court by the Governor General and Council.

12th. That it be competent to the Sudder Dewanee Adaulut, in case of any Appeal, where the original Cause has not been sufficiently investigated in the inferior Court, or for other Cause which may be deemed reasonable by the Sudder Dewanee Adaulut, either to receive such further Evidence as may be proper for the just Determination of the Cause, or to send the Cause back to the inferior Court where it originated, with special Directions to the Judge thereof, with regard to the new Evidence he shall receive thereon, as shall be deemed by the said Court most conducive to Justice, and the Convenience of the Parties and Witnesses.

13th. That the Sudder Dewanee Adaulut may, as it may deem conducive to Justice, Respect being had to the Nature of the Cause and the Evidence, either examine the Witnesses to be produced in Court, viva voce, in open Court, causing the Witnesses to be first sworn, their Depositions reduced into Writing, and signed by the Witnesses respectively; or authorize the Register of the Court to swear and examine such Witnesses, take their Depositions in Writing, and procure the same to be signed by the respective Witnesses, and authenticate the same by his Signature, so that such Examination be in the Presence of both Parties, or their Vackeels, who shall be at Liberty to put such Questions to the Witnesses as they shall think proper; which Questions, and the Answers thereto, shall be in like Manner reduced into Writing, signed and authenticated. Provided nevertheless, if due Notice be given to the Parties, or their Vackeels, of the Examination of any Witness or Witnesses before such Register, and he or they shall not attend at the Time of such Examination, the Register shall and is hereby authorized to proceed to the Examination as before directed; and such Depositions shall be received as good and authentic Evidence. Provided, that where any Witness may be of such Rank, Cast, and Quality, that it may be, from the Prejudice of the Country, improper to administer an Oath to them, the Judge of the Court may dispense with their being sworn, on their subscribing a Declaration to the following Effect, viz. If the Witness be a Hindoo, "I will faithfully answer such Questions as shall be put to me by the Court (or the Register thereof) in the Cause now before the Court, according to the Truth; I will declare nothing not warranted by the Truth; if I declare any Thing not warranted by the Truth, I shall be deserving of Punishment from Ishar."—And in case such a Witness be a Mussulman, "I do sincerely promise and swear, in the Presence of Almighty God, that I will faithfully, and without Partiality, answer any Question put to me by the Court (or the Register thereof) respecting the Cause now before the Court, according to Truth." And the Testimony and Deposition of such Witness or Witnesses so subscribing, shall be as valid as if the Witnesses had been sworn.

That it be competent to the Sudder Dewanee Adaulut to receive any original Complaint whatever, and refer the same to the Provincial Dewanee Adaulut, to whose Jurisdiction the Matter of Complaint shall of Right belong, and to order and command the Judge of the Court to hear, try, and determine the same.

That no Judge of any Provincial Dewanee Adaulut shall, upon any Pretence whatsoever, cause to be made any Report of any Matters of Fact, relating to any Cause depending before them by any Officer or Officers whatsoever; and that no Depositions or Deposition of Witness or Witnesses be read in any Cause, unless the same shall have been made publicly in open Court by such Witness or Witnesses, him or themselves, after having been duly sworn, in that Form or Manner which shall be deemed most binding on his or their Conscience, "bespeak the Truth, the whole Truth, and nothing but the Truth;" and before such Witness or Witnesses shall have signed or attested

## A P P E N D I X, N<sup>o</sup>. 4.

tested the same; and that every Exhibit, or written Evidence whatsoever, be produced in open Court at the Trial, and duly proved by Examination of Witnesses, sworn as aforesaid, whose Depositions shall be reduced into Writing, and attested as aforesaid; and that every Exhibit or Exhibits, with proper Marks describing the same, and referred to in the Deposition or Depositories, proving the same be annexed to such Deposition or Depositories. Nevertheless, that it be competent to such Judge to refer any Question arising on the Mussulman or Hindoo Law, to any Maulavy or Maulavies, Pundit or Pundits, Respect being had to the Law in which each is conversant; so that such Maulavy or Maulavies, Pundit or Pundits, be duly sworn to answer to the best of his or their Judgment or Judgments: And that a Statement of Facts on which the Question shall arise, be made out in Writing, signed by the Judge of the Court, and be delivered to such Maulavy or Maulavies, Pundit or Pundits, for his or their Opinion thereon, and a Blank left for the Answer or Answers of such Maulavy or Maulavies, Pundit or Pundits, to be wrote on the same Paper on which the Question is stated, immediately under and following the same, and be signed by and with the Names of such Maulavy or Maulavies, Pundit or Pundits, together with the Date of the Time when such Question or Questions was or were submitted to him or them, and when such Answers shall be given.

That if any written Evidence be offered to any Provincial Dewanee Adaulut, in any Cause depending therein, if the Court shall in their Judgment think fit to reject the same, the Judge so rejecting such Evidence, shall endorse on the Back thereof the Word "Rejected," together with the Name of the Cause, and the Date of the Time when the same shall be rejected; and shall enter a Memorandum on the same, or on a Paper thereto to be annexed, of his Reason for not admitting the same on Evidence, with his Name subscribed thereto; and shall return the same so endorsed, and with such Memorandum, to the Person attempting to produce the same in Evidence.

That all Rules, Orders, Regulations, and Resolutions heretofore made by the late President and Council, and Court of Sudder Dewanee Adaulut, with regard to the Administration of Justice in the said Court of Sudder Dewanee Adaulut, and Provincial Dewanee Adauluts, together with the Rules, Orders, Regulations, and Resolutions thereby made and ordained, be forthwith published by Advertisement at the Presidency, and Copies thereof be transmitted to the Judges of the Provincial Dewanee Adauluts, with Orders to carry them into Execution; and to publish them, by Advertisement affixed in the Cutcherries where such Courts shall be held or sit.

The Board approving of the above Regulations, ordered the Secretary do furnish the Superintendents of the several Provincial Dewanee Adauluts, with Copies of them for their Guidance.

**Mr. Francis.**—I cannot give my Assent to that Part of the 12th Article, by which, in the Case of an Appeal, the Sudder Dewanee Adaulut is authorized to receive such further Evidence as may be proper for the just Determination of the Cause. The Reasons on which my Opinion on this Point are founded, and to which I adhere, are expressed in a joint Minute, signed by Sir John Clavering, Colonel Monson, and myself, on the 21st of March 1776, in the Secret Department, and recorded on the 29th of May following, an Extract from which I beg Leave to enter here:

Extract of a Joint Minute of Sir John Clavering, Colonel Monson, and Philip Francis, Esquire; bearing Date the 21st of March 1776, and recorded on the Proceedings of the Governor General and Council, in their Secret Department, under Date the 29th of May 1776.

"The First or Superior Court to be composed of the Governor General and Council, and of the Chief Justice and Judges, supposes the executive to assume the Office of the judicial Power; and this Court, which is of Appeal in the last Resort, may receive fresh Exhibits, and examine new Witnesses. In both Instances, in the Constitution and Practice of the Court we see a direct Violation of the First Principles of English Jurisprudence, without the Plea of adhering to the Institutions of the Country.—The Examination of new Witnesses is liable to this further Objection, that, being discretionary, it is open to Interest and Partiality. If admitted in all or many Cases, the Court would soon sink under the Weight of Business, or be compelled to relinquish it."

The Governor General desires, that the Reasons on which that Part of the 12th Article, objected to by Mr. Francis, was first introduced into Practice in the Sudder Dewanee Adaulut, may be added in this Place by the Secretary.

The Secretary having searched the Records of the Sudder Dewanee Adaulut, for the Regulation referred to by the Governor General, has not been able to find it, occasioned by one of the Sections of the literary Proceedings of that Court, being at present mislaid; for, with respect to the Regulation itself, the former Assistant in that Department has a Recollection of its standing recorded; as appears also by the Practice having been introduced and used in the judicial Process of that Court.

## A P P E N D I X, N° 5, 6.

### A P P E N D I X, N° 5.

*Extract of a General Letter from Bengal, dated 7th January 1781.*

**T**HE Sum of Forty-five Lacks of Rupees, to which the First Loan on Bonds bearing an Interest of 8 per Cent. per Annum, was restricted by our Resolution of the 2d October last, having been completely subscribed; we have determined to authorize the Receipt of such further Sums into the Treasury, as might be tendered to it for like Bonds.

The State of our Treasury this Day, is as follows.

Ready Money	—	—	8,17,446	11	9
Bills receivable	—	—	1,85,728	2	—
Mint, general Treasury	—	—	4,80,732	13	—
Unsorted Treasure	—	—	6,58,964	14	6
					<hr/>
Current Rupees			21,42,872	9	3
					<hr/>

Deduct the Amount of appropriated Sums, as follows:

Balance Account Deposits	—	—	—	—	—	11,00,900	8	5	
D° Accomptant General of the Mayor's Court	—	—	—	—	—	1,36,358	4	—	
Amount of the old bonded Debt, in which the Interest has ceased by public Advertisement	—	—	79,342	11	10				
D° D° on Account of the Churchwardens, bearing a Running Interest, by Order of the Court of Direc- tors	—	—	98,200	—	—				
D° of the new bonded Debt	—	62,58,651	1	6					
D° 4 per Cent, Remittance Loan	—	14,55,550	—	—					
D° Annuities, 1780	—	94,720	—	—					
						78,08,921	1	6	
Rupees							79,86,463	13	4
									<hr/>

### A P P E N D I X, N° 6.

Harley-Street, 14th November 1781.

Sir,  
**O**N the 20th of last Month, I requested Mr. Michell to inform the Court of Directors of my Arrival in London. On the same Day, I did myself the Honour of waiting on you at your House; and the Monday following on the Deputy Chairman. Since that Time, I have waited in Town in daily Expectation of receiving the Commands of the Court of Directors, or your's, in some Shape or other; but no Notice whatsoever has yet been taken of me. The Explanation with which you favoured me this Morning, as I understand it, leaves me no Room to doubt, that this Neglect of me, on your Part at least, if not on that of the Court of Directors, has been deliberate and intended; I am therefore obliged, in Vindication of my Character and Conduct in the Company's Service, to take this Method, which you yourself preferred as the least liable to Misconstruction or Mistake, of requesting, that, at the first Meeting, you will receive the Sense of the Court of Directors on the following Question:

“ Whether, in their Judgment, I have or have not executed the Duties of my Station, in the Government of Fort William, faithfully and honourably ? ”

If

## A P P E N D I X, N<sup>o</sup>. 6.

If they say *No*, I trust and expect that they will, at the same Time, point out in what Instances or Instances, I have not acted faithfully and honourably to the East India Company : If they say *Yes*, I then request, that you will express to them my Hope and Expectation, that I shall be called upon to receive their Approbation of my Conduct directly from themselves, in the Form and Manner usually observed on such Occasions. No Man knows better than you do, that the Acknowledgement I claim from them, if they should think it in Substance due to me, is not a mere Compliment of Formality, or that it can be omitted to me, without an indirect Censure of my Conduct. No Man knows better than you do, that I have deserved the Approbation of my Employers.

The Conversation I had with you Yesterday, will enable you to satisfy the Court of Directors, that nothing is intended in this Letter, that can or ought to be deemed inconsistent with the Respect due to that Public Body, of which you are at present the Chief Member.

I have the Honour to be,

Sir,

Your most obedient  
humble Servant;

P. Francis.

Laurence Sulivan, Esq. Chairman  
of the Court of Directors

East India-House, 14th November 1781.

Sir,

The Chairman of the East India Company having received and laid before the Court of Directors, your Letter dated this Day, I am ordered to acquaint you, that they have, on Consideration thereof, desired the Chairman and Deputy Chairman to receive such Information as you may please to offer on the Company's Affairs. I am also further ordered to acquaint you, in regard to the other Part of your Letter, that the Court of Directors will take the same into future Consideration ; and that the Chairman and Deputy Chairman will be ready to receive you at this House, at such Time as may be most convenient to yourself.

I am, Sir,

Your most obedient  
humble Servant,

P. Michell, Secretary.

P. Francis, Esq.

Harley-Street, 15th November 1781.

Sir,

I am to acknowledge the Favour of your Letter, in which you inform me, " That the Court of Directors have, in Consideration of my Letter to the Chairman of the 14th Instant, desired the Chairman and Deputy Chairman to receive such Information as I might offer on the Company's Affairs ; and that, in regard to the other Part of my Letter, the Court of Directors will take the same into future Consideration."

In Reply to this Notification of the Pleasure of the Court of Directors, I beg that, in the first Place, you will please to observe to them, that there is not one Word in my Letter of the 14th Instant, to the Chairman, that either directly expresses, or indirectly implies, an Offer on my Part, or a Desire, to give them Information on the Company's Affairs. On a Re-perusal it will appear, that I confined myself strictly and exclusively to a single Point, which you describe to be the *other* Part of my Letter, and which relates solely to myself, and the Situation in which I stand. I did not solicit the Court of Directors to give me Audience for the Purpose of offering to them any Information on the Company's Affairs ; I did most cautiously avoid it, because I thought it belonged to *them* to demand such Information from me, if they were of Opinion that any Information within my Knowledge or Judgment, might be of Importance to the Company's Service.

My Letter to the Court of Directors from St. Helena, dated the 29th of March 1781, contains the following Passage : " It gives me great Concern, that my proceeding to England is likely to be delayed, as I believe it to be very material to the Company's Service, that the Information, which I am able to give you, of the real State of your Affairs in India, should be laid before you as speedily as possible ; " and I did conclude that the Court of Directors, having this Intimation before them, would have fixed upon an early Day, after my Arrival in London, to call for my Attendance. They alone, however, were to judge of the Propriety or Impropriety of doing so. It was not for *me* to force any Thing into their View, which did not immediately and essentially concern myself.

## A P P E N D I X, N° 6, 7.

You will be pleased to inform the Court, that, in Obedience to their Commands, I shall, on Monday next, do myself the Honour to wait on the Chairman and Deputy Chairman, at the East India House.

P. Michell, Esq.  
Secretary to the Honourable  
the Court of Directors.

I am, Sir,  
Your most obedient  
humble Servant,

P. Francis.

## A P P E N D I X, N° 7.

(C O P Y.)

*Mr. Francis's Letter to the Court of Directors.*

Gentlemen,

FOR your Convenience, as well as to assist my own Memory, I have thrown together, in the Paper which I have now the Honour to deliver you, short Memorandums of the principal Points on which I wish and propose to give you all the Information in my Power. Some Things will require Explanation—others may have been omitted, which I may recollect hereafter. I am ready, and shall be so at all Times, to answer any Questions you may think fit to put to me; and I hope that, if any Thing farther should occur to me, which may now have escaped my Attention, you will allow me to communicate it to you in Writing, whether as a Correction of any of the Contents of this Paper, or in Addition to them.

East India House,  
19th November, 1781.

I have the Honour to be,

Gentlemen,

Your most obedient, and  
humble Servant,  
P. Francis.

Chairman and Deputy Chairman of the Honourable the Court of Directors.

East India House, 19th November 1781.

When I had the Honour of addressing the Court of Directors from St. Helena, it was not known to me, that one of the Subjects on which I proposed to give them Information, would be brought so directly and explicitly into their View, as I find it has been, by Mr. Hastings's Letter to them of the 2d of December 1780—as he therein expressly tells you, “That they shall be under the Necessity of making a large Reduction, and possibly a total Suspension of your Investment for the ensuing Year; and that he cannot pronounce what their Ability may be, beyond that Period.”—I have nothing to offer on that Head, but that I am thoroughly convinced that the Necessity to which Mr. Hastings alludes, will continue to operate, if not increase, in its Force, and in all its Effects; and that no Man, who knows any Thing of the real State of India, can, even by Conjecture, point out a Period at which such Necessity will cease to be felt. Peace at present is not within Sight; and whenever there shall be a Peace, I can venture to assure you, that the comparative State of your Expences and Resources in India, as they will then stand, will not exhibit a Surplus applicable to the Purchase of an Investment. It is my most serious Opinion, that you will never again have an Investment purchased with any Savings from the Revenues of Bengal. I hear you have lately authorized the Governor General and Council to draw upon you for Five hundred thousand Pounds, to be applied strictly to this Object:—You know, better than I do, how long the Company can support such a Demand upon their Resources in England.—As long as it can be supported, you will consult the Welfare of Bengal at least, in laying this Burden on the Company. If there be no Investment purchased in one Year, the landed Revenue of the Country will, in a little Time, be found to fail nearly in the same Proportion: One is, in effect, the Supply of the other.—Again, as there is properly no Trade in Bengal, or next to none, but that which is created by the Purchase of the Company's Investment, it follows, that in whatever Proportion such Investment is diminished, the Manufacturers are so far forth left without Employment—the Consequence of which must be, that they will either fly the Country, or turn to some other Occupation, and the Manufactures

be

87

## APPENDIX, N<sup>o</sup> 7.

be proportionably debased, if not irrecoverably lost.—Reflections of this Nature, I presume, must have occurred to you, when you authorized the Governor General and Council to draw upon you for so large a Sum. Whether it will be in their Power to apply the Whole of it in the Manner you expect, I very much doubt:—But as a collateral Resource, applicable to the same Object, I submit it to you to consider, whether the following Idea might not be adopted with Advantage, under such Corrections and Improvements as your own Judgment may suggest: That all Europeans, and others, resident in Bengal, having Money which they wish to remit to England, should be invited to subscribe it into the Treasury of the Board of Trade, to be applied to the Purchase of Piece Goods, Raw Silk, &c. on Condition that their Bills on the Company, at a favourable Rate of Exchange (suppose, for Example, 2 s. 1 d. the Current Rupee) shall be accepted and paid at a given Period after the Arrival of the Ships in England. This Expedient, I believe, would produce Twenty-five Lacks a Year, at least for a Year or Two; and, as far as it went, the Extraction of Specie from England and from Bengal, would be proportionably and equally saved. I submit this merely as an Hint to your better Judgment.

The Second Point on which I meant to offer you some Information, was the State of the Administration of Justice in Bengal; but, as I find that this Subject has been already taken up by the Legislature, and is likely to be resumed at the Meeting of Parliament, I shall not enter further into it in this Place.—One Fact only it is fit you should be apprized of, because it directly concerns the Company's Interest, and may require some immediate Orders from you. It is, that whereas, in many Acts and Declarations of the Governor General and Council, and more particularly, in their Declaration made to the Supreme Court of Judicature on the 11th March 1780, it was constantly avowed and maintained by them, that the Zemindars and other Landholders of Bengal, were exclusively subject to the Jurisdiction of the Governor General and Council—the Chief Justice of the Supreme Court was, nevertheless, appointed in October 1780, by a Majority of the Board, consisting of the Governor General and Sir Eyre Coote against Mr. Wheler and me, to be Superintendent or Judge of the Dewanee Adauluts, and to decide, in the last Resort, in all Appeals from those Courts;—that the Chief Justice had accepted the Office; and that on the 24th of October, the Governor General proposed an Allowance of 5,600 Sicca Rupees a Month for the Chief Justice, which at that Time was not voted.

These Subjects being dismissed, I come to the great leading Facts, which constitute the actual State of India, as far as I am acquainted with it.—1st. The Dominions of your Ally, or rather your Vassal, the Nabob of Oude, are utterly, and I believe irrecoverably ruined. In the Year 1776, the Revenues of that Country, and its Dependencies, exceeded Three hundred Lacks of Rupees. In April 1780, they were so reduced, that whereas the Company's Demand on the Vizier for that Year, as stated by Mr. Charles Purling, amounted to One hundred and Twenty Lacks, and as stated by me, to One hundred and Fifty Lacks, no Assignments could be had from the Vizier for more than Ninety Lacks, and he himself was reduced to the absolute Want of a bare Subsistence for himself and his Family. You will find the Particulars recorded in our Consultation of the 3d of April 1780. You cannot but be sensible how far the Fact of itself extends, and to what Consequences it leads. I mention it now for the following Reason, out of many that are still more important. I find, that in the Report of the Committee of Proprietors, dated the 19th of December 1780, Credit is taken (under the Head of Outstanding Debts due to the Company) for Current Rupees, 25,65,989, due by Asoph ul Dowlah, Nabob of Oude, with as much apparent Confidence and Security, as if you had the Money in your Treasury in Leadenhall Street:—Now I do assure you, that this Debt, so far from being discharged, is by this Time immoderately increased; and that it never can be discharged out of the Revenues of Oude, which, when I left India, were far short of being equal to the indispensable Establishments of that Government, and which were still declining rapidly every Day.—2d. I have good Reason to believe, that your Ally, the Rana of Gobud, as I find him entitled in the Governor General's Letter, is much dissatisfied with the Presence of your Troops, and with the Effects it has produced in his Country: That Major Popham was so apprehensive of being betrayed by him to the Marattas, that he seldom or never ventured to communicate his Plan of Operations to him, and more particularly in the Instance of his Enterprize on Guawlior: And that no Part of the Subsidy due by the Treaty from the Rana, or only a very small Proportion of it, had been discharged. The Truth is, he is too inconsiderable, that I had hardly ever heard of his Name, before the Treaty of Alliance with him, and Guarantee of his Dominions, were proposed by the Governor General.—3d. With respect to the Rajah of Berar, you are already in Possession of my Opinion of his Views and Disposition towards our Government, and of the Intent and Consequence of his keeping an Army stationed upon our Frontier in Cuttack. In my Letter of the 29th of March last, I told you that he had made a Demand of Money from us, for the Payment of this Army. I must now add it as a Fact, which I have absolute Reason to believe true, though I am not able to prove it, that Money to the Amount of Three or Four Lacks of Rupees, was actually sent to the Commandant of that Army, and that a much larger Sum was promised by the Governor General, without the Advice, Consent, or Knowledge of the Council. With respect to the Detachment under the Command of Lieutenant Colonel Pearce, avowedly formed for the Purpose of marching through Cuttack and the Northern Circars, towards the Carnatic, and of co-operating with Sir Eyre Coote,

A P P E N D I X, N° 7.

Coote, I must inform you, that so long as the above Maratta Army remains upon our Frontier, the Detachment cannot move without leaving Bengal open to Invasion; that while the Marattas keep the same or any other Situation upon our Frontier, they necessarily engage too much of our Force and Attention from other Objects; which, without an actual Rupture with us, produces many other Effects of the most avowed Hostility. I do not think the Governor General himself will deem it prudent to move Colonel Pearce's Detachment Southwards, until the Danger which may and ought to be apprehended from the uncertain Motions of the Rajah of Berar, shall be clearly and absolutely removed: He cannot do it, but in Contradiction to my Opinion, repeatedly given at the Board, and which ought to hold good as long as the State of Facts is the same: He never can obtain the Consent of Mr. Wheler, who I know is immovably fixed in this Point: And finally, he cannot do it even with the Approbation of Sir Eyre Coote, who, though very desirous of receiving every possible Support from Bengal, did nevertheless freely admit that the Measure was not to be thought of, unless we were perfectly secure of the Maratta Army in Cuttack. You already know, that in November 1780, the bonded and other Debts against your Treasury in Bengal, exceeded Eighty Lack of Current Rupees. You may depend upon it, that that Burthen will increase as long at least as the War continues, and as long as Money can be borrowed on any Terms. — 4th. In the Report of the Committee of Proprietors, I find the bonded Debt of Bombay stated at Bombay Rupees, 35,11,955. The Fact is, that on the 30th of April 1780, their bonded Debt amounted to Bombay Rupees, 50,89,213. Having no Means to pay the Interest of 9 per Cent. on this Debt, their Practice is to convert the Interest at the End of every Half Year, into Principal. Supposing this to be done, as I have no Doubt it has been, the Result will be, that at the End of October 1781, their bonded Debt will amount to Bombay Rupees, 58,07,634. Admitting that the Debt is not otherwise increased by an additional Loan. It is also a Fact, that, by their own Estimate, their Expences from April 1780 to April 1781, would exceed their Resources in the Sum of Rupees, 38,34,492, which of course is a Debt on the Government, whether bonded or not: The whole Bombay Debt therefore, without reckoning any Thing incurred since April last, must now stand at Bombay Rupees, 96,42,126, and this I believe to be very much under the Amount.

5th. I cannot speak particularly of the bonded Debt at Fort Saint George, but I have heard from good Authority, that it amounted to the utmost they could borrow. One Fact, however, is necessary to be brought into your immediate Observation; that whereas the Committee of Proprietors have taken Credit in their Report for Outstanding Debts and Property at Fort Saint George, convertible into Cash, to the Amount of £1,380,083: That whole Credit, or by far the greatest Part of it, is ideal. Their Expences are estimated by Sir Eyre Coote at above Seven Lacks of Rupees a Month, which, he declares, "must all come from Bengal, as there were no Resources in the Carnatic, from which a single Pagoda was to be expected."

6th. In Bengal, I am first to observe to you, that all the Establishments in the Civil Departments have been immoderately increased since Sir John Clavering's Death; but these, however great in themselves, are not to be mentioned in Comparison with the Excess to which the Military Charges have been carried in the same Period. In the 28th Article of the Instructions which General Clavering, Colonel Monson, and I, carried out with us, in the Year 1774, the Company say, "Our Military Expences at Bengal having increased to a Degree, which is become *insupportable* to us, we, in an especial Manner, enjoin you to make strict Enquiry into the Causes of such Increase, &c." At that Time, the Military Charge which the Company called *insupportable*, as in Truth it was, did not exceed Eighty Lacks of Current Rupees per Annum; the Estimate of the same Establishment, for the Year ending in April last, amounted to Two hundred and Fourteen Lacks and an Half; and this Charge, I conclude, has increased in the current Year; I am sure it cannot have been diminished. I am unwilling to say any thing of the actual State of the Army, in regard to its effective Strength, compared with the Establishment, its Discipline, or the Punctuality with which the Native Troops are paid, because it would be going out of my own Department, and partly because I cannot give you Lights on this Subject, from my own direct Knowledge of it: Thus far however I think it my Duty to say, that from my own Observation, and from all the Information I have been able to collect, I have too much Reason to believe, that your Army actually wants a strict Inspection into its Discipline, and a vigorous Command over it; and that this is true in a Degree much beyond what you will be inclined to believe, or what I could make good. The Thing in its Nature is not capable of Proof in England, your Judgment therefore must be guided and determined by your Opinion of the Veracity and Honour of those whom you consult.

7th. In the Report of the Committee of Proprietors, I am sorry to observe, among several other exceptionable Articles, that Credit is taken for Outstanding Debts due to the Company in Bengal, to the Amount of Current Rupees 77,22,548, and that this Sum makes Part of the final Balance of Pounds Sterling, supposed to be in Favour of the Company, just as much as the Money in your Treasury, or the Value of the Goods in your Warehouses, in London. I beg Leave to assure you, that these Debts, or the greatest Part of them, have stood for Years on the Company's Books, and are believed in Bengal to be desperate. I declare to you I never heard of a Debt of any Consequence being recovered by the Company in India. If these Debts were of a recoverable Nature, it is to be presumed that a considerable, or at least some Part of them, would have been recovered at a Time when the Governor General and Council were trying every possible Expedient to borrow Money at an high

## A P P E N D I X, N° 7.

high Interest: But the Fact, on the contrary, from a Comparison of the Accounts in my Possession, stands thus:

25th September 1779, Total Debts due to the Company	—	—	—	108,21,543
31st October 1780, Ditto	—	—	—	110,74,218

Increase of Debts due to the Company in those Thirteen Months	—	2,52,675
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8th. Thus far, without descending to minuter Objects, I have confined myself to what I believe to be strictly the Facts, in stating to you the general Situation of your Affairs: My Opinion on some of them shall be laid before you, with the same Freedom and Sincerity.

I find, with Concern, that a Habit begins to prevail in this Country, of sending out new Corps of Europeans for the Service in India. In my Judgment, and in that of all the Officers of Experience with whom I have conversed in Bengal, you would find it a much less expensive, and a much more effectual Method of providing for that Branch of your Service, if you sent out Recruits sufficient to complete the European Regiments at the several Presidencies. The dividing those Regiments into Two Battalions each, when the Companies could not shew above Twenty-three Rank and File, was a most ill-advised Measure, and produced many bad Effects, besides a very great Increase of Expence. When I left India, they wanted more than Half their Complement. Your Army in Bengal, if the Establishment be kept complete, is sufficiently numerous; it does not want Field Officers, at least not many; nor Captains, nor Subalterns; in these Ranks, I believe your Army is as well supplied as any Service in that Country can require: But it does want Two or Three General Officers, Men of Activity, of Experience, and of established Reputations; if possible, they should be in the Prime of Life, and as high in Point of personal Rank as can be found; under *their* Inspections, your Establishments will be kept complete, and your Troops in general, acquire as much Discipline and Vigour, as an Indian Army is capable of, or as the Nature of that Service is likely to demand.

9th. With respect to your Connections or Differences with the Country Powers, I have already told you in what Estimation the English Name and Authority are universally held by those Powers. The Re-establishment of Peace in India, which in Effect is no more than reverting to your own original Principles, is now become indispensably necessary, not only to your Prosperity or to your Safety, but I say, to your Existence. If the present Wars are to be continued, you can no more support the Consequences of Success than of Defeat: No Victory in India will ever again pay the Expence of the Army that gains it. I need not tell you, what Effect another Defeat might produce. The Disaster which befel Colonel Bailie's Detachment, was felt in the most distant Parts of our Provinces: Another Event of the same Nature would, as I apprehend, go near to drive all the Sepoys out of your Service.—Before the late unfortunate Transactions on the Two Coasts, the Reputation of your Arms had supported your Credit and Influence throughout India. But that Reputation has been wantonly hazarded, and severely wounded; and your Credit and Influence have accordingly sunk along with it. Peace then, at all Events, must be your Object. On this Point I can give you other Explanations, if they are desired; if not, I shall content myself with saying, that the Indian Powers have lost all Confidence in the Good Faith and Steadiness of the Government of Bengal.

You cannot but be thoroughly possessed of my Opinion of the Injustice and Imprudence of all our Proceedings with respect to the Marrattas: On this Subject you *now* have all the Evidence before you, that Argument and Reason, confirmed by the most ruinous Experience, are capable of furnishing. In attempting to support the Pretensions of Ragoba, and the Views of the Presidency of Bombay, you found the *unanimous* Opinion of the Governor General and Council, that is, of Men who seldom agreed in other Points, decidedly against the Measure. This was true at least in the Year 1775, though a different System has since prevailed in Bengal. I shall say nothing of the Conduct of Mr. Hastings's Negotiation with Moodajee Boosla. You see to what a State they have reduced us, and in what Conclusion they have ended. In my Judgment, the Principle on which that Scheme was professedly founded, stood in Opposition to the obvious Dictates of sound Policy and common Sense. After the Death of Madharow in 1772, the Union of that great Body, which constituted the Maratta Empire, was dissolved. The principal Chiefs set up for themselves, and no longer acknowledged any one common Superior; or, if they acknowledged the Superiority of the Infant Peshwa, it was purely a Matter of Form. In this State, they naturally endeavoured to secure their respective Independence, by courting the Friendship, or at least by avoiding the Enmity, of the English Power. In what Sense could it possibly be our Interest to restore the Union of an Empire so dissolved, supposing the Attempt practicable, or to vest its united Strength in the Hands of a single Person? In the Year 1778, they were so divided among themselves, that nothing but our invading their Country, with the avowed Design of overturning their Government, could have made them act together.—Such was the Plan of Mr. Hastings's proposed Alliance with the Rajah of Berar, as it stands exhibited in his Instructions to the late Mr. Elliot, in July 1778, and in many other recorded Documents. The same Plan included another Object, not less unwise in Point of Policy, and still more dangerous in the Execution than the first: I mean the Project of uniting with Moodajee Boosla, to invade the Dominions of Nizam Ally Khan, and to deprive him of a considerable Part of his Possessions. From this Project, which could not be long a Secret to the Nizam, the subsequent Union, which appears to have been concerted by

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him,

## A P P E N D I X, N° 7, 8.

him, between Hyder Ally, the Marattas, Moodajee Booslah, and himself, took its Origin. The Invasion and Ruin of the Carnatic sprung from the same Source; and, in Conclusion, the Rajah of Berar, for whose Advancement the Plan is professedly formed, joins in the Confederacy against us, and in Effect (though not yet avowedly when I left India) becomes one of the most dangerous Enemies we have to contend with. If this Confederacy should not be strong enough to maintain itself, and to accomplish the Designs of the contracting Parties, whatever they may be, their last Resource will unquestionably be, to call in the French to their Assistance.—I will not trespass, Gentlemen, any longer on your Patience.—If Objections are made to any Thing advanced in this Paper, I believe I can answer them. If Explanations are wanted, I am ready to give them.—In entering so far as I have done into such a Detail, it is not my Purpose to criminate any Man, nor even to condemn Measures, merely for the Sake of condemning them.—Your Governments in India are actually involved in a Labyrinth of Difficulties. I therefore think it my Duty to trace to you the principal Steps by which you have been, imperceptibly to yourselves, misled into this Labyrinth; because I believe it to be the surest, if not the only Method you can take, to find your Way out of it.

P. Francis.

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## A P P E N D I X, N° 8.

*Copy of a Letter sent over some Time ago by Mr. Francis, late one of the Council of Bengal, and a Passenger in the last arrived Ships.*

To the Court of Directors.

Calcutta, 12th December, 1780.

Gentlemen,

THE Accounts you will receive, of a Duel between Mr. Hastings and me, I presume will attract some Degree of your Attention. It concerns my Honour and Reputation, that the Transaction should be accurately stated to you in the first Instance, and through you to the Company. It also concerns the Company's Interest, that the Cause of this Event, with all the public Acts or Declarations of the Members of this Council, immediately or remotely connected with it, should appear fully before you. The only fair and impartial Method of bringing them forward, is by laying before you, as I now do, authentic Extracts of such our Proceedings, as have a Relation to them, without Narrative or Comment.

The Papers I send you enclosed, are not only necessary to possess you of the Nature and Occasion of the personal Difference between Mr. Hastings and me, but will give you such a View of the State of the Company's Affairs in this Part of India, and of the Measures which have produced it, as I trust will make a deep Impression on your Minds.

We are now endeavouring to tread back the fatal Steps which have been taken in the last Three Years, by this Government, and by the Presidency of Bombay; but I would not undertake to answer for the Success of our present Endeavours, because a right System may be attempted too late, or the Means taken in Pursuit of it, may not be the wisest that might be chosen. In our Circumstances, it is very difficult to say what Plan is likely to succeed, or what Plan is free from Objection. I shall contribute my Advice and Assistance as long as I continue in the Council; but I will not embarrass the Execution of Measures, which may prevail against my Opinion, by a useless, perhaps a dangerous, Opposition to it. My Efforts to prevent the Distress which has fallen upon your Affairs, were exerted, without Remission, during a long Period, in which they might have been of essential Service to you, if they had either been regarded here, or supported from Home. You have suffered the Company's fundamental Principles of Policy to be overthrown; their Instructions to the Governor General and Council to be violated, and your own specific Orders, in various Instances, to be disobeyed with Impunity. You have heaped Condemnation, from Year to Year, on the Governor General and another Member of your Council, in the strongest Terms that ever were applied to Men, possessing so high a Trust and Station, and not instantly divested of both. You have also been pleased to favour the late Sir John Clavering, Colonel Monson, Mr. Wheler, and me, with repeated Assurances of your Approbation of our Principles and Conduct, and with repeated Promises of Support. You have given us Reason to expect definitive Orders and Regulations on many important Subjects,

## A P P E N D I X, N° 8, 9.

Subjects, which have never been sent; particularly in an Instance of the first Magnitude and Importance, in which you have declared to us, "That the Measures which it might be necessary for you to take in Consequence thereof, in order to retrieve the Honour of the Company, and to prevent the like Abuse from being practised in future, should have your earliest and most serious Consideration."

At the End of Six Years, since the Institution of the present Government, the concluding State of Facts is, that the Men whose Conduct you have so condemned, have never received any serious Proof of your Displeasure; but on the contrary, have been continued in Trust and Station by a new Appointment; and the Principles and Measures which you have constantly reprobated, have been suffered to prevail and operate, from Year to Year, to their present Conclusion, in the Face of your own Orders and Instructions, against the most strenuous Opposition in the Council; and notwithstanding the strongest Remonstrances, both public and private, accompanied with the clearest Explanations of the real State of Affairs here, which have been sent Home by every Means in my Power, since my Arrival in the Country.—Look back to the Situation of your Affairs, as long as Sir John Clavering's Efforts and mine had Weight enough to preserve the Peace of India, to which, in the first Article of our Instructions, you ordered us to fix our Attention, and compare it with that, to which an opposite Policy, permitted, if not encouraged, by yourselves, has reduced them. Every Step that led from one to the other, was regularly marked to you as it was taken. Every Event that has happened was foretold. I will not now predict to you what is likely to be the Condition of all the Company's Possessions in India: At the Time when you will receive this Letter, you will have Facts enough before you to judge for yourselves.

The Struggle to which I have dedicated my Labours so long without Effect, and in which I have sacrificed my Repose and the Peace of my Mind, to no Purpose, is now at an End. In the Course of Three Months I mean to quit Bengal, and return to England, where it is possible my Presence may be of some Use to the Company, though it is of none here.

I have the Honour to be,  
Gentlemen,  
Your most obedient humble Servant,  
(Signed) P. Francis.

## A P P E N D I X, N° 9.

*Extract of Bengal Revenue Consultations, the 23d of May 1775.*

**T**HE Governor General proposes, That as the dispatching the Northumberland he hopes will leave a less Weight of Business on the Hands of the Board, than with which they have been hitherto loaded; and as the Suspension of the Business of the Sudder Dewanee Adaulut may prove a great Obstruction to Justice, the Board do set apart every Wednesday as formerly, for the regular Meeting in this Court: That it be made a Rule of the Court, that Two Members may be sufficient to compose it; and in Case of a Difference of Opinion on any Cause, a full Court may be summoned at any Time for the Rehearing of it. He will gladly take his Share in this Attendance, which may be so contrived as not to impede other Business. If this be agreed to, he will further propose, that public Notice be given, in the usual Manner, that the Court will be open again, and assemble regularly every Week, that such Persons as have Appeals to make, may attend.

**Mr. Francis.**—I think, that before the Court of Sudder Dewanee Adaulut shall assemble, we ought to apprise the Judges of our Intention, in order that if our Proceedings be liable to any Objection on their Part, from a clashing of Jurisdiction or otherwise, they may previously apprise us of it; otherwise it may happen, that our Decrees, which, from the Nature of the Institution ought to be final, may be appealed from to the Supreme Court, and reversed there.

The Court of Sudder Dewanee Adaulut, is supposed to be the last Resort; if any Appeal from its Decree should in any Instance be received by the Supreme Court, I conceive that our Jurisdiction would be thereby ipso facto abolished.

Mr.

## A P P E N D I X, N<sup>o</sup> 9.

Mr. Barwell.—I agree to the Governor's Proposal.

The Honourable Mr. Monson.—I understand the Sudder Dewanee Adaulut to be a Court of Appeal, from which there is no Resort. As the Causes which come before this Court, may afterwards be carried into the Supreme Court of Judicature, I think this Court totally unnecessary, as Appeals from the Provincial Dewanee Adauluts may be made to this Board, and they may go under an Examination here, and if this Board think proper to confirm the Decrees of the Provincial Councils, I think their Authority cannot then be called in Question by the Supreme Court of Judicature.

General Clavering.—The Court of Sudder Dewanee Adaulut, being a Court of Appeal from the Courts of Adaulut established in the Country, its Decisions ought to be final. Sir Elijah Impey, as I understand, has declared, that it would be dangerous to bring the Powers of the Supreme Court and the Supreme Council into Discussion; and in a Letter received from the Judges Yesterday, they have acquainted us, that they will oblige all Persons who apply for Writs, to swear, that the Person against whom the Writ is intended to be issued, is subject to the Jurisdiction of that Court; that is to say, that he shall swear to the Facts or Circumstances by which the Person becomes amenable to the Court. If they acted conformably to this Declaration, I cannot conceive in what Manner they have deemed many Zemindars, who have been arrested, to be brought to Calcutta, to come under that Description. If they consider a Person to be a Servant of a British Subject, because he receives a Pension from this Government, they may equally allow a Writ to be issued against the Nabob, or the King Shah Allum; I therefore think, that the Court is useless, till the Jurisdiction of the Supreme Court be declared, that it will not, under any Pretence whatever, interfere or receive Complaints upon Matters relative to the Revenue, whereupon either the Courts of Adaulut may have decided, or which finally shall be so by the Court of Sudder Adaulut. If the Members of this Council shall be of Opinion, that the Judges will give us any Satisfaction upon that Subject, I should advise that Mr. Francis's Proposition be adopted, of writing to the Judges to obtain their Information from them.

Governor General.—I conceive the Rule established by the Judges of the Supreme Court, the most, if not the only effectual Means of preventing Suits being brought before them, which do not appertain to their Jurisdiction; but I apprehend, that it will not immediately produce its compleat Effect.

All Innovations, of whatever Utility, require Time to bring them to Perfection, to be universally understood, and to be guarded by the subsidiary Regulations against the Inconveniences to which they may be liable in their first Form. In the Case of a Zemindar, against whom Application may be made by a Writ in the Supreme Court, the Plaintiff or Prosecutor may be obviously misled by the Zemindar's monthly Stipend, or he may designedly discontinue it; and, under Pretext of his being a Servant, and receiving the Wages of the Company, may make Oath accordingly; it will remain, therefore, to be decided, whether such a Stipend infers the Possessor of it to be a Servant of the Company. To me it appears, that it cannot, by any Construction, be so understood. And in the first Instance in which it shall come into Debate before the Court, their Decision upon it will serve as a Precedent for all future Cases of the like Nature; but, until it is so determined, it appears to me indispensably necessary, that every Person against whom Complaint shall be made to the Supreme Court while such a Doubt remains, whether he is or is not amenable to its Jurisdiction, must appear before it, either in Person or by his Attorney, and plead to its Jurisdiction, before the Cause can be dismissed, otherwise every Man might refuse to submit to their Authority. I do not mean this as an Objection to Mr. Francis's Proposition; but to give my Sentiments of the Proceedings of the Court in the Cases alluded to by the General.

Agreed, That the Judges of the Supreme Court of Judicature be written to as follows:

Sir Elijah Impey, Knight, Chief Justice, and the Judges of the Supreme Court of Judicature at Fort William in Bengal.

Gentlemen,

From the first Establishment of the Supreme Court of Judicature in Calcutta, we were apprehensive, that Difficulties and Inconveniences might possibly arise in the general Administration of Civil Justice, and in the Collection of the Territorial Revenues of these Provinces, from a clashing of Jurisdiction between the Supreme Court, and the Dewanee Courts of Adaulut, which were instituted under the Authority of the Duan, for hearing and determining all Civil Suits whatsoever, between Native and Native, and all Causes relative to the Revenue. Our Doubts on this Subject had a more particular Relation to the Court of Sudder Dewanee Adaulut. We beg Leave to inform you, that this Court was instituted to receive and determine Appeals from the Provincial Dewanee Adauluts; that the President, with Two Members of the Council, preside therein, attended by the Dewan of the Khalsa, the head Canongoes, and other Officers of the Cutcherry. This Court of Appeal, being composed of the Members of the Council, it necessarily follows, that it can be held nowhere but in the Town of Calcutta: For that Reason, it may appear to assume and exercise judicial Powers, inconsistent with the local Jurisdiction of the Supreme

## A P P E N D I X, N° 9.

preme Court. Under these Doubts, and under the Uncertainty, whether our proposing any Questions to you, concerning the Limits of your Jurisdiction, might not be liable to Objection, we have hitherto thought it adviseable to suspend the sitting of the Dewanee Sudder Adaulut. But as, on the one Side, a further Suspension of the Proceedings of that Court would defeat the Purposes for which it was instituted, and operate in Effect to the total Abolition of the Court; and as on the other, we know not how far we can safely and legally sit as Judges in a Court of Appeal, whose Decrees must, from their Nature, be final; we have thought fit, before we came to any Determination, to request your Opinion, Whether, supposing the above Court should resume their Proceedings, an Appeal from their Decrees will be to the Supreme Court? Whether the Cognizance of any Cause brought by Appeal before us, can be removed by your Authority, to the Supreme Court of Judicature? or, Whether the Decrees of the Court of Dewanee Sudder Adaulut, will justify the ministerial Officers of the Court in carrying those Decrees into Execution?

Considering the Principles on which this Court was instituted, and the Power with which it was vested to decide in the last Resort, we conceive, that if an Appeal from its Decrees should, in any Instance, be received by the Supreme Court; or if a Cause may be removed from thence to the Supreme Court; or if our Officers are liable to Prosecutions for carrying our Decrees into Execution; in all, or any of these Cases, the Jurisdiction of the Court of Dewanee Sudder Adaulut would be *ipso facto* abolished.

Fort William,  
23d May 1775.

We are, &c.

### *Extract of Bengal Revenue Consultations, the 25th July 1775.*

Read the following Letter, from the Judges of the Supreme Court of Judicature, in Answer to the Questions contained in the Board's Letter of the 23d May.

Honourable Sir and Sirs,

We thank you for the Caution you use in submitting Questions to us. Though we are not in general justifiable, and therefore ought to be reserved in delivering extra-judicial Opinions; we are at all Times desirous of affording you every Assistance and Information that is compatible with our Duty. As the Questions now proposed will, as we apprehend, never come judicially before us, and as we shall thereby prevent the Suspension of Justice, we are much pleased to feel ourselves at Liberty to give you direct and full Answers.

1st. If the Dewanee Sudder Adaulut should resume their Proceedings, an Appeal from their Decrees will not lie to the Supreme Court.

2d. The Cognizance of any Cause, brought by Appeal before that Court, cannot be moved by our Authority into the Supreme Court.

3d. The Decrees of the Dewanee Sudder Adaulut will justify the ministerial Officers of the Court, in carrying those Decrees into Execution, in all Cases in which the Provincial Dewanee Adaulut had legal Jurisdiction in the original Cause.

We take the Liberty of adding, that as the local Jurisdiction of the Supreme Court is limited to the Town of Calcutta, the Factory of Fort William, and the Limits thereof, we hope you do not entertain any Apprehension, that the Authority of the Criminal Courts exercising Jurisdiction elsewhere, either in the Provinces at large, or in the Purgunnahs adjacent, are affected by the Establishment of the Supreme Court; for we should be extremely sorry that our Powers, which are calculated to promote, should in any Instance, be understood to impede the Course of Justice.—We did not receive the Honour of yours, of the 23d, till this Day.

Mr. Justice Chambers is absent from the Settlement on a Visit. We know we must have had his Concurrence, and would not suffer a Moment's Delay in your Proceedings, as soon as it was in our Power to prevent it.

We are,  
Honourable Sir and Sirs,  
Your very humble Servants,

(Signed)      E. Empey,  
                  S. C. Lemaistre,  
                  John Hyde.

Calcutta,  
May 28th, 1775.

## A P P E N D I X, N° 10, II.

### A P P E N D I X, N° 10.

*Copy of a Letter from the Governor General of Fort William, in Bengal, to the Chairman of the Court of Directors, dated 6th January 1781.*

To the Chairman of the Court of Directors.

Sir,

HAVING thought proper to appoint an Agent at Home, for the Purpose of attending to my political Interests, and managing all my public Concerns, I take this Opportunity of acquainting you, that I have selected Major Scott for this Service; and have furnished him with suitable Instructions: And as this Gentleman is possessed of every necessary Information relative to the State of this Government, he will be ready to communicate with you, on all Matters wherein you may think it proper to ask his Opinion.

It is material to me to make one Observation; that, in my Instructions to Major Scott, I have particularly provided, that I will suffer no Person whatever to perform any Act in my Name, that shall be construed to imply a Resignation of my Authority; protesting against the Exercise of so dangerous a Power, from its having been assumed upon a former Occasion, without being warranted by my Consent, or by any previous Instructions, that could bear the most distant Tendency to such a Measure.

I have the Honour to be,

Sir,

Your most obedient,

and most humble Servant,

Warren Hastings.

Fort William,  
January 6th 1781.

*Extract of a Letter from the Governor General and Council at Fort William in Bengal, in their Secret Department, to the Court of Directors of the East India Company; dated 7th January 1781.*

The Departure of Major John Scott to Europe, by express Appointment from the Governor General, as his private Agent, affording us an Opportunity of addressing you, we have the Honour to avail ourselves of it, in transmitting to you, in Triplicate, our last Advices from this Department by the Ships Fox and Walpole.—Major Scott has taken his Passage on a Portuguese Ship, which being to stop in her Way at Fort Saint George, we have recommended it to the President and Select Committee at that Place, to embrace the same Occasion of transmitting to you a Relation of the Occurrences upon the Coast, to the latest Period of Major Scott's Stay.—We beg Leave to recommend this Gentleman to your Favour; and that he may be restored to the Company's Service, without Prejudice to his Rank, if he should be hereafter desirous of returning to Bengal.

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### A P P E N D I X, N° II.

*The Evidence respecting the State of the Gaol.*

MR. James Creassy being examined, said, That he lived at the Dock Yards at Kidapore, within Two Miles of Calcutta, about Eighteen Months; that he left Calcutta about 15th April, 1779. And being asked, Whether, during the Time he was at Calcutta, he had any Knowledge of the Common Gaol of that Place? he said, Yes, he was imprisoned there by a Sentence of the Supreme Court, upon Two Actions for Trespass, upon Assault and Battery—that he was confined Two Days and One Night—that the Gaol is an old Ruin of an House; it appeared to him to have been formerly the Residence of some Black Native—there were very few Windows to admit Air, and those very small—during the Time of his Confinement, he asked the Gaoler how many Souls were then confined in that Prison? who answered, Upwards of 170, Blacks and Whites included—that there was

## A P P E N D I X, N° II.

ho Gaol Allowance, and that many Persons had died for the Want of Necessaries of Life; and that he believed more would have died, if he had not relieved them out of his own Pocket—the nauseous Smells, arising from such a crowded Place, was beyond Expression—besides the Prisoners, the Number of Women and Attendants, to carry in Provisions and dress Victuals, was so great, that it was astonishing that any Person could long survive such a Situation. Being asked, What were the Dimensions of the Gaol? he said, It is built round a small Square, of about Fifty or Sixty Feet in Dimensions, but he cannot speak positive as to the exact Dimensions—that the Building appeared to him to be about Sixteen or Seventeen Feet wide—he thinks the Building did not go quite round the Square—that there is a Wall and a Gateway, but he did not see the back Part of the Prison—he thinks the Building is Two or Three Stories high, but he cannot say which. And being asked, Whether the Prisoners were, without Discrimination of Cast or Religion, mixed together in the Goal? he said, As it is a common Goal, he never heard of any other Distinction but what the Gaoler chose to make: The Gaoler was so indulging to him, as to permit him to reside in the Apartment belonging to himself. Being asked, Whether there seemed to be in the Prison, Apartments proper to accommodate Persons of Rank and Distinction? he said, No, it was the most horriblie Place he ever saw, take it altogether; there are little Partitions, but for want of Windows to admit Air, even if they were appropriated for particular Persons, they would be very uncomfortable Dwellings. Being asked, Whether the Prison is supplied with plenty of good Water, by Pipes, or any other Method? he said, He never saw any but what was brought in in Pitchers, from a Tank near the Court House, which Water is very good. And being asked, Whether there was any Want of that good Water? he said, He heard no Complaints; he was there but a short Time.

Then Mr. William Hickey being examined, was asked, Whether he was acquainted with the Gaol at Calcutta? he said, Perfectly well, he has been in it very often; he visited an Englishman who was confined there—you enter the Prison by a large Gateway, over which is the Gaoler's Apartment; you then enter a Yard; the Space from the Gateway to the Prison, he thinks is about Twenty Yards; the Prison, he supposes, is about One hundred Feet in Front, and about Thirty Feet deep; it is what is called here, a Single House; it is divided into small Apartments, and those very bad; the Stench dreadful, and more offensive than any he ever experienced in this Country—that there is no thorough Draught of Air, but formerly there might have been—the Windows are neither large nor numerous—the Rooms are low in Comparison to the Rooms of Houses in India, but in this Country they would not be deemed low—there are some open Drains which run into the back Yard, from which, in a great Measure, he conceives the Stench to arise. And being asked, Whether there are commodious separate Apartments, fit for the Reception of Prisoners of Distinction? he said, Certainly not one in the Prison—there is a large Yard at the Back of the Prison; it is nearly about One hundred Feet square; the Prison is on one Side, and on the Three other Sides a high Wall; in the Middle is a Tank, in which the Prisoners promiscuously bathe, and wash their Cloaths; the Tank is nearly about Thirty Feet square—the Person he visited had erected a small Tent of Bamboo and Matting in this Yard, at his own Expence, by the Sheriff's Permission, which is an Indulgence generally allowed to Europeans—that this Person has frequently told him, that it would be impossible for any European to exist any Length of Time in the Prison, but even in that Shed, it was at Times scarcely to be endured, from the Stench of the Tank, Drains, &c.—he experienced the Stench himself, which the Prisoners told him came from the Tank, but this was nothing like what he had experienced in passing through the Prison. And being asked, Whether that Tank appeared to him a commodious Place for decent Persons to bathe in, and make their Abolutions? he said, He thinks not. Being asked, Whether Water is laid into the Prison at the public Expence? he said, He does not know; he conceives not, because he was asked for Charity by a female Prisoner, and she asked for Money to pay her Servant Boy for bringing Water to her, and that if she did not get the Money she would have no Water; she spoke in Moorish, which he did not understand, but it was interpreted to him. Being asked, Whether Hindoos, Mahomedans, and Europeans, were thrown indiscriminately into that Prison? he said, They were all together, with the Exception of the Indulgence to Europeans before mentioned. And being asked, Whether the Debtors and Criminals were separated? he said, No, he has frequently met Prisoners with Fetters on? being asked, Whether the Men were separated from the Women? he said, He believes not, but he is not positive. Being asked, In what Manner the Food for the Prisoners is provided? he said, By the Prisoners themselves, or by their own Servants. Being asked, Whether he has seen the King's Bench Prison? he said, He has. Being asked, Which he thinks the most commodious Prison, considering the Circumstances of the Two Countries? he said, They will not bear a Comparison, Calcutta is so much worse. Being asked, Whether he thinks Imprisonment in the Two Countries, under any Circumstances, similar in its Effects? he said, He conceives it much more likely to prejudice the Health, even of the Natives there, than here—that the Sheriff has the Superintendence of the Gaol—and all Complaints from the Prisoners are made to him—that there were great Numbers sick when he was there. And being asked, Whether there was any Infirmary or Provision for the Sick, or any Medical Assistance allowed to the Gaol? he said, He believes none, he never heard of any.

W. C. L. C. K. 2 9 5 A

John Wadsworth  
to whom it belongs

